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ABSTRACT

This document presents the Utah State Department of Education's guidelines to Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). The guidelines specifically address Subparts D and E of the regulations for Section 504, which deal with education. An introduction offers examples of discriminatory acts by school systems against individuals with disabilities and is followed by a list of acronyms and definitions. An overview of Section 504 summarizes each subpart and charts responsibilities under the law of various individuals and groups. The next section compares Section 504, the ADA, and the Individuals with Disabilities Education Act. Eight procedural requirements under the law are then explained. Guidelines for determining eligibility and services are then detailed and include indicators for considering possible accommodations and/or services and the process for service determination. A section on accommodations and services lists strategies under the following categories: environmental, organizational, behavioral, presentation, methodology, and curriculum. A list of 100 effective accommodations and services precedes examples of accommodations for 18 specific disabilities. Twenty common questions and answers conclude the guide. Appendices include the text of Section 504 and regulations, sample forms, and important Office of Civil Rights policy letters. (DB)

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Section 504/ADA: Guidelines for Educators and Administrators

Utah State Office of Education

September 2002

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SECTION 504/ADA

Guidelines For Educators and Administrators

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INTRODUCTION

The purpose of these guidelines is to provide technical assistance to school staff and other stakeholders regarding obligations under Section 504 of the Rehabilitation Act. These same obligations are required by the Americans with Disabilities Act (ADA). **These guidelines address Subparts D and E of the regulations.**

Section 504 of the Rehabilitation Act was enacted in 1973. These federal regulations have seven sections:

Subpart A.	General Provisions
Subpart B.	Employment Practices
Subpart C.	Program Accessibility
Subpart D.	**Preschool, Elementary, and Secondary Education Requirements**
Subpart E.	**Post Secondary Education Requirements**
Subpart F.	Health, Welfare, and Social Services
Subpart G.	Procedures

"Handicapped individuals" will hereafter be referred to as "individuals with disabilities" in order to be consistent with current educational terminology.

For many years, the main area of enforcement of Section 504 has been employment issues for individuals with disabilities. However, within the last several years, the Office for Civil Rights (OCR) has become more active in the provisions of Section 504 regarding the education of students with disabilities.

Requirement

The 504 statute prohibits discrimination against any individuals with disabilities by agencies receiving federal financial assistance.

SECTION 504/ADA EXAMPLES OF DISCRIMINATION

The following are some examples of how school districts can discriminate against individuals with disabilities:

1. A student with a disability is denied recognition on the honor roll because one of their classes is in the special education resource room.

2. A student is expelled from school for misbehavior that is related to his/her disability.

3. The school refuses to provide bus transportation that is as short in duration (within reason) as provided to student without disabilities.

4. The school refuses to allow a student with a disability the opportunity to audition for athletic teams, cheerleading, or other extracurricular activities.

5. The school denies course credit to a student whose absenteeism is the result of a disability.

6. The school refuses to dispense medication to a student who needs it to benefit and have access to their education.

7. The high school counselor fails to provide information about the special provisions of college board examinations to students with disabilities.

8. The school refuses to provide a modified adaptive physical education program for a student who is obese and cannot participate in regular physical education.

9. The school does not provide an interpreter for a parent who is deaf to attend a school meeting regarding his/her child.

10. Children with disabilities are denied access to extacurricular activities.

ACRONYMS/DEFINITIONS

The following are commonly used acronyms and definitions used in Section 504/ADA and special education.

ADA — Americans with Disabilities Act

ADAAG — Americans with Disabilities Act Accessibility Guidelines

ADD — Attention Deficit Disorder

ADHD — Attention Deficit Hyperactivity Disorder

AG — Annual Goal

AP — Accommodation Plan

BLST— Building Level Support Team

CD — Cognitive Delay

CFR — Code of Federal Regulations

CIMP — Continuous Improvement Monitoring Process

DD — Developmental Disabilities

DNR — Do Not Resuscitate

ED — Emotionally Disturbed

ESY — Extended School Year

FAPE — Free Appropriate Public Education

FERPA — Family Educational Rights and Privacy Act

HI — Hearing Impaired

IDEA — Individuals with Disabilities Education Act—Special Education

IEP — Individualized Education Program

IFSP — Individualized Family Service Plan

LEA — Local Education Agency

LRE — Least Restrictive Environment

LD — Learning Disability

MPRRC — Mountain Plains Regional Resource Center

OCR — Office for Civil Rights

OHI — Other Health Impaired

OSEP — Office of Special Education Programs

OT — Occupational Therapy

Part B — Special Education for School-Aged Children

Part C — Special Education for Infants and Toddlers Birth Through Two Years

PT — Physical Therapy

SEA — State Education Agency

Section 619 — Special Education for Three to Five Year Olds

STO — Short Term Objective

TAT—Teacher Assistance Teams

TTY — A Telecommunication Device for the Deaf (Teletypewriter)

VI — Visually Impaired

504 — Section 504 of the Rehabilitation Act

DEFINITIONS

ACCOMMODATIONS — Adaptations made by classroom teacher(s) and other school staff to enable the students to benefit from their educational program. In some cases, a Section 504 plan should be developed outlining accommodations.

ADA ACCESSIBILITY GUIDELINES (ADAAG)— Standards used to meet Section 504/ADA accessibility requirements for the design, construction, and alteration of buildings.

AMERICANS WITH DISABILITIES ACT — 1990 (ADA) — A civil rights law that prohibits discrimination against persons with disabilities in the areas of accessibility, employment, public services, public accommodations, transportation, and communication.

BARRIER-FREE ENVIRONMENT — A school environment that contains no obstacles to accessibility and usability by students and other individuals with disabilities. Barriers can be physical and non-physical.

BUILDING LEVEL SUPPORT TEAM (BLST) ALSO KNOWN AS TAT — A group of school staff knowledgeable about the student who work together recommending accommodations to help the student succeed in his/her general educational program. This is sometimes referred to as a pre-referral process. Every effort should be made to keep the student in the regular education program. A referral is made for an evaluation after all efforts have failed.

CONSENT — Written parent permission before initial evaluation and placement.

CONTAGIOUS DISEASES PROTECTED UNDER 504 — Contagious diseases are those that can be transmitted from person-to-person. Examples are diseases such as AIDS, HIV, and tuberculosis.

FREE APPROPRIATE PUBLIC EDUCATION — Related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of nondisabled persons are met.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT, (IDEA) — Federal special education law and regulations.

MAJOR LIFE ACTIVITY — Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

OFFICE FOR CIVIL RIGHTS (OCR) — This federal agency has three primary responsibilities: investigating complaints, conducting compliance reviews, and providing technical assistance. There are 10 regional offices located throughout the United States.The OCR office representing Utah is located at the U.S. Department of Education, Office of Civil Rights, Region VIII, 1244 Speer Boulevard, Suite 310, Denver, Colorado 80204-3582, (303) 844-5695, TTY (303) 844-3417.

PHYSICAL OR MENTAL IMPAIRMENT — (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or physical disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

PROGRAM ACCESSIBILITY — The school will ensure programs and activities are accessible to and usable by persons with disabilities. In many instances, programs and activities may be made accessible through slight modifications and adjustments in procedures, practices, and policies. In others, building renovation or construction may be required. Structural change is required only where program accessibility cannot be achieved effectively through other means.

PROGRAM OR ACTIVITY — In the context of Section 504/ADA, this includes all operations of state and local agencies that receive federal funds. This includes colleges, universities, and/or school districts.

PUBLIC ENTITY — Any school, organization, agency, or office that receives federal funding and is therefore obligated to follow Section 504/ADA requirements.

PUBLIC NOTICE — The school is required to provide public notice and internal notice (i.e., to staff, individuals with disabilities, and students) stating it does not discriminate on the basis of a disability.

QUALIFIED STUDENT — Any student who has a physical or mental impairment that substantially limits one or more major life activities and impacts education.

SECTION 504 — The Rehabilitation Act of 1973 that guarantees specific rights in federally funded programs and activities to people who qualify as disabled. Section 504 states: "No otherwise qualified disabled individual in the United States... shall, solely by reason of a disability be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

SECTION 504/ADA COORDINATOR — The school employing 15 or more persons must assign a person to coordinate compliance with Section 504 regulations. It is recommended that all schools appoint a 504/ADA coordinator. It is recommended that the same individual serve as the Americans with Disabilities Act Coordinator and be a general educator.

SECTION 504 CASE MANAGER — This is usually the primary school staff member providing accommodations for a specific child. Common case managers are counselors, school nurses, and general education teachers. The case manager maintains the Section 504 student file.

SELF-EVALUATION — The Americans with Disabilities Act requires that federal fund recipients evaluate their programs, physical accessibility, and employment practices to determine the extent to which programs and activities require modification to ensure full participation by students with disabilities. These evaluations should be revisited annually by the Section 504/ADA coordinator. The self-evaluation should not be confused with student evaluation.

TITLE 1 — Provides financial assistance to states and eligible agencies to deliver supplemental services to at risk students.

TRANSITION PLAN— If a school determines that structural modifications are necessary to meet Section 504/ADA program accessibility requirements, the school must develop a plan specifying the steps necessary to complete such changes and the time frame for completion.

OVERVIEW OF 504

Section 504/ADA is a civil rights statute aimed at discrimination. Like other statutes of Title VI (race) and Title IX (gender), Section 504/ADA focuses on discrimination based on disability. All programs or activities of the school are covered by Section 504/ADA obligations.

No State or federal funding is provided to assist in complying with Section 504. All costs are the obligation of the general school budget. Many schools have established a Section 504 line item in their general fund budget to cover necessary accommodations for individuals with disabilities.

ELIGIBILITY

Section 504 has several areas that are particularly important for schools: Subpart B — employment practices, Subpart C — program accessibility, and Subparts D and E— requirements for preschool, elementary, secondary, and post secondary education. These guidelines will primarily focus on Subparts D and E.

SUMMARY OF SUBPARTS

SUBPART A: GENERAL PROVISIONS

This part of the regulations outlines the nondiscriminatory responsibilities of schools that receive federal funds or are a public entity. No person, on the basis of a disability, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program that benefits from federal funding or is a public entity.

All schools must comply with the following requirements:

- Provide written assurances of nondiscrimination when applying for federal funds.
- Take steps to eliminate discrimination against individuals with disabilities.
- Appoint a 504/ADA coordinator for schools with 15 or more employees to coordinate efforts to comply with these laws.

— Best Practice —

Even if a school has less than 15 employees, they should appoint a Section 504/ADA coordinator.

- Develop an ongoing process to locate and identify children who are not receiving services.
- Provide public notice regarding nondiscrimination and responsibilities.
- Develop a grievance procedure to resolve discrimination claims.
- Conduct a self-evaluation of their programs and activities to ensure facilities are accessible and discriminatory practices are eliminated.

SUBPART B: EMPLOYMENT PRACTICES

No qualified person shall, on the basis of his/her disability, be subjected to discrimination in employment by any program or activity that receives federal funds or is a public entity.

The school must make reasonable accommodations for qualified applicants or employees with known physical and mental impairments unless the accommodation would impose an undue hardship on the operation of the school's program. Examples of reasonable accommodations would include: making facilities accessible to and usable by persons with disabilities, job restructuring, part-time or modified work schedules, and acquisition or modification of equipment or devices.

The regulations mention the following factors to consider in determination of "undue hardship." The school district can claim undue hardship in the area of employment.

1. The overall size of the school's program with respect to the number of employees, number and type of facilities, and size of budget.
2. The type of the school's operation, including the composition and structure of its workforce.
3. The nature and cost of the accommodation needed.
4. The burden of proof is always on the school.

Undue hardship cannot be used in relation to providing eligible children with a free appropriate public education. Like special education (IDEA), lack of funds cannot be used as an excuse for not proving services.

SUBPART C: PROGRAM ACCESSIBILITY

No individual with a disability shall be denied the benefits of, be excluded from participation in, or be otherwise subjected to discrimination under any program or activity because facilities are inaccessible or unusable. Building and program accessibility is applicable to any individual with disabilities accessing any activities or programs in that school building.

The regulation contains two standards to be used in determining whether programs and activities are accessible to individuals with disabilities. One standard deals with "existing" facilities; the other deals with "new" construction. The term "existing facility" means the facility was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. The term "new construction" means groundbreaking that took place on or after the effective date of the regulation. Existing facility under ADA was January 26, 1992.

Leased facilities (mobile units) that are leased or constructed with federal funds are required to meet the standards of new construction. Other leased units are required to meet the standards of existing facilities.

The standard for a facility existing before June 3, 1977, for 504, or January 26, 1992, for ADA, requires that federally assisted programs or activities operated in that facility must, when viewed in their entirety, be readily accessible. *This standard does not require that every facility or part be accessible, so long as the program or activity as a whole is accessible.* Thus, recipients need not make structural changes to facilities that existed before June 3, 1977, for 504 or before January 26, 1992, for ADA, where other alternative methods are effective in making programs and activities accessible, so long as priority consideration is given to offering the services in the most integrated setting appropriate.

One example of an alternative method in a school would be the relocation of classes, activities, or services to an accessible site. Facility alteration or new construction is required to achieve program accessibility only if sufficient relocation of classes, activities, or services cannot be housed in an existing facility. In meeting the objective of program accessibility, the school must take precautions not to isolate or concentrate students with disabilities in settings away from students without disabilities.

The regulation requires that all new construction begun after June 3, 1977, for 504, or January 26, 1992, for ADA, as well as alterations to existing facilities, must be designed and constructed so as to make facilities accessible and usable by individuals with disabilities.

SUBPART D: REQUIREMENTS FOR PRESCHOOL, ELEMENTARY, MIDDLE LEVEL, JUNIOR HIGH, AND SECONDARY EDUCATION.

Preschool, elementary, middle level/junior high, and secondary programs must take into account the needs of qualified persons with disabilities in determining the aid, benefits, or services to be provided under these programs or activities.

The school must provide a free appropriate public education to students with disabilities in its jurisdiction who are eligible under Section 504/ADA. Instruction must be individually designed to meet the needs of those students as adequately as the needs of students without disabilities. **This standard of what is "appropriate" differs from the IDEA "appropriate" standard, which requires the school to design a program reasonably calculated to confer educational benefit. An appropriate education under Section 504/ADA requires that the services be effective and equal.**

Although Section 504/ADA does not require schools to develop an Individual Education Program with annual goals and objectives, it is required that the school provide written documentation for each student eligible under Section 504/ADA. If the Teacher Assistance Team suspects a need for accommodation, a referral should be made, evaluations conducted, and possible eligibility determined by a team knowledgeable about the student. If the student is eligible, the team might develop a Section 504 Accommodation Plan.

The quality of educational services provided to students with disabilities must be equivalent to the services provided to students without disabilities. Teachers, administrators, staff, and parents should receive ongoing training in the instruction of individuals with disabilities and be knowledgeable about the disability, appropriate materials, and equipment. The Section 504/ADA coordinator will be responsible to develop and implement staff and parent training.

Responsibility

It must be emphasized that Section 504/ADA falls under the *management of general education*. The figure on the next page illustrates some obligations of general education under Section 504/ADA and their relationship with school personnel roles. The school staff and parents should collaborate to help guarantee that students are provided with necessary accommodations. A student who is found to have a disability under Section 504/ADA should be served by the resources provided through general education. The exception to this standard is a student who has been determined eligible as having a disability under the Individuals with Disabilities Education Act (IDEA). Such a student could receive special education services under IDEA and accommodations required under Section 504/ADA. Many schools will include the Section 504 accommodations on the IEP, rather than developing two separate documents.

504/ADA RESPONSIBILITIES

Student and Parent

- Involved in suggesting accommodations
- Participate in Section 504 meetings
- Benefit from the program

School Principals, Certified, and Classified Staff

- Conduct nondiscriminatory practices in classrooms
- Refer/identify/evaluate students, as appropriate
- Encourage parent involvement
- Develop and implement program modifications and accommodations

504 Coordinator*

- Coordinate Section 504/ADA process
- Provide staff and parent training
- Manage Section 504/ADA grievance procedures
- Help conduct the self-evaluation

Superintendent

- Designate 504/ADA Coordinator
- Provide annual notice to parents/students
- Provide continuing notice to students/employees

School Board

- Establish policies of nondiscrimination
- Develop grievance procedures
- Develop hearing procedures

*Parents and school personnel must be notified as to who is the 504/ADA coordinator.

— BEST PRACTICE —

Every attempt should be made to resolve any differences between the school and parents before a complaint is filed or the Office for Civil Rights is contacted. Mediation is an excellent technique to resolve differences.

In summary, it is important to keep in mind that some students who have physical or mental impairments that substantially limit their ability to participate in the education program are entitled to accommodations under Section 504/ADA even though they may not fall into special education categories and be covered by the special education law. **It is also important to remember that Section 504/ADA should be a management responsibility of general education.**

SUBPART E: POST SECONDARY EDUCATION

Listed below are some responsibilities of post secondary programs:

Admissions

1. An individual with a disability cannot be denied admission to a program solely on the basis of his/her disability. Recruitment efforts by a post secondary school must avoid any discrimination against individuals who have a disability.
2. A test cannot be used that discriminates against an individual with disabilities. All tests should be validated and normed for the population to which it is given and for the purpose it is intended.
3. The school must provide internal and external public notice stating the program does not discriminate on the basis of a disability.

Treatment of students

1. No qualified student with a disability can be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other post secondary education program or activity.
2. A post secondary program may not exclude any qualified student from any course of study or other part of its education program on the basis of a disability.

Academic adjustments

1. Adjustments to academic requirements may be necessary to ensure that such requirements do not discriminate on the basis of disability.
2. Modifications may include changes in the length of time permitted for the completion of a degree, substitution of specific courses required for the completion of the degree, and accommodations in the manner in which specific courses are conducted.
3. Academic adjustments could include tape recorders in classrooms, guide dogs or service dogs in campus buildings, and special arrangements for administering examinations.
4. Auxiliary aids could include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions.
5. The school should provide comparable, convenient, and accessible housing to individuals with disabilities at the same cost as to others.

Financial and employment assistance

1. In providing financial assistance to qualified individuals with disabilities, a school may not provide less assistance than is provided to nondisabled persons, limit eligibility for assistance, or otherwise discriminate.
2. A school that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure that such employment opportunities are made available to all students.

Nonacademic services

1. A school that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics should provide an equal opportunity to participate in these activities to a qualified individual with a disability.
2. A school that provides personal, academic, or vocational counseling, guidance, or placement services to students should make these services available to individuals with disabilities.
3. A school that provides assistance to fraternities, sororities, or similar organizations should assure that the membership practices of such organizations do not permit discrimination.

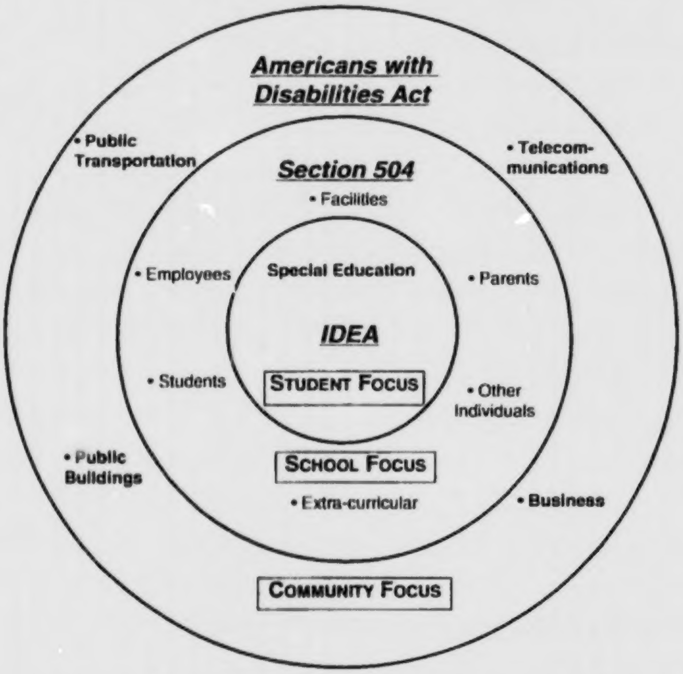
A COMPARISON OF SPECIAL EDUCATION, SECTION 504, AND ADA

Relationship between Section 504 and Special Education (IDEA)

Section 504, while intended to be consistent with the Individuals with Disabilities Education Act P.L. 105-17 (IDEA), is more encompassing. All individuals who receive special education and related services under IDEA are also considered to be qualified individuals under Section 504. However, all individuals who qualify for Section 504 services may not qualify for special education under IDEA.

The figure below gives a visual representation of the relationship between Section 504, special education, general education, and the Americans with Disabilities Act.

Special education defines as eligible only students who have certain specific types of disabilities and who, because of those conditions, need special education and related services. **The Section 504 definition of a disability is much broader, including any physical or mental disability that substantially limits one or more major life activity, including, but not limited to, learning.** Section 504 covers all students who meet this definition, even if they do not fall within a special education category and do not need special education. Section 504 also covers school employees and others with disabilities.


Americans with Disabilities Act
• Public Transportation
• Telecommunications
Section 504
• Facilities
• Employees
Special Education
• Parents
IDEA
• Students
STUDENT FOCUS
• Other Individuals
• Public Buildings
SCHOOL FOCUS
• Extra-curricular
• Business
COMMUNITY FOCUS

Section 504 regulations concerning provision of a free appropriate public education closely parallel requirements of special education. Individuals who qualify for Section 504 educational services may require accommodations. The eligibility for Section 504 services must be based upon evaluations conducted by a team of individuals knowledgeable of the student.

The next few pages illustrate similarities and differences between the three major laws.

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COMPARISON

Issues	Section 504	Individuals With Disabilities Education Act	Americans with Disabilities Act
TYPE	A Civil Rights Law.	An Education Act.	A Civil Rights Law.
TITLE	The Rehabilitation Act of 1973.	The Individuals With Disabilities Education Act (IDEA).	Americans with Disabilities Act of 1990 (ADA).
PURPOSE	Is a civil rights law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education.	Is a federal law that provides financial aid to states in their efforts to ensure a free appropriate public education for eligible students with disabilities.	Provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.
RESPONSIBILITY	General and special education.	Special and general education.	Public and private schools, business establishments, and public buildings (services).
FUNDING	School general education budget.	State, local, and federal. IDEA funds cannot be used to serve students eligible only under Section 504.	Public and private responsibility (no federal funding).
ADMINISTRATOR	Section 504 coordinator (systems with 15-plus employees) to coordinate efforts to comply with this law.	Special education director or designee.	ADA coordinator is required to coordinate efforts to comply with this law.
SERVICE TOOL	Accommodations and/or services, sometimes called a Section 504 accommodation plan.	Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP). Some IEPs will include Section 504 accommodations necessary for success in the general classroom.	Reasonable accommodations and legal employment practices.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
POPULATION	Identifies person as disabled so long as she/he meets the definition of qualified persons with disabilities; i.e., has or has had a physical or mental impairment that substantially limits a major life activity that impacts the student's educational program.	Identifies certain qualifying conditions: autism, deafness, deaf-blindness, developmental delay, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.	Identifies person as disabled so long as she/he meets the definition of a qualified person with disabilities; i.e., has a physical or mental impairment that substantially limits one or more major life activities.
ELIGIBILITY	A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity that impacts the student's educational program.	A student is only eligible to receive special education and related services if the team determines that the student has a disability under one of the qualifying conditions and requires special education services.	A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity.
FREE APPROPRIATE PUBLIC EDUCATION	A student could receive special education services and/or related services and/or accommodations if eligible.	A student must first be eligible and need special education. Related services are added if they benefit the student's special education program.	Addresses education in terms of accessibility requirements. Requires private and public entities not to use employment practices that discriminate on the basis of a disability.

Issues	Section 504	Individuals With Disabilities Education Act	Americans with Disabilities Act
ACCESSIBILITY	Federal regulations regarding building and program accessibility.	Requires that modifications must be made if necessary to provide access to a free appropriate public education.	Requires that public programs be accessible to individuals with disabilities.
UNDUE HARDSHIP	Undue hardship is rarely granted in regards to educational services for students with disabilities.	Budget and/or administrative convenience is never an excuse.	Consideration is given to the size of the business and its budget, type of operation, nature, and cost of accommodation.
DRUG AND ALCOHOL USE	Current drug use is not considered a disability. An individual who has stopped using drugs and/or alcohol and is undergoing rehabilitation could be eligible for accommodations.	Drug and alcohol use is not covered under special education.	Current drug use is not considered a disability. Current alcohol abuse that prevents individuals from performing duties of the job or that constitutes a direct threat to property or safety of others is not considered a disability.
CONTAGIOUS DISEASES	A student with a contagious disease could be eligible. He/she might need to be educated in another location away from the school.	Could be eligible under the category of "other health impaired."	Permits qualification standard requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others.
PROCEDURAL SAFEGUARDS	Both require notice to the parent or guardian with respect to identification, evaluation, and placement.		Makes provisions for public notice, hearings, and awarding attorney fees.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
PROCEDURAL SAFEGUARDS CONT.	Procedural requirements are vague. OCR recommends schools follow IDEA-like procedures.	Procedural safeguards are detailed and explained in the State parent rights brochure.	Self-evaluations and transition plans are required and updated annually.
CONSENT	Written consent would be considered a best practice.	Written consent is required prior to the initial evaluation and placement.	
EVALUATIONS	Evaluation draws on information from a variety of sources in the area of concern. Decisions are made by a group knowledgeable about the student, evaluation data, and placement options. Requires written parental notice. Written parental consent is considered a best practice. Requires periodic reevaluations.	A full comprehensive evaluation is required assessing all areas related to the suspected disability. The student is evaluated by a team. Consent is required before the initial evaluation is conducted. A reevaluation is not required before a significant change in placement.	All schools should conduct or update their Section 504 self-evaluation regarding services, accessibility, practices, and policies to assure discrimination is not occurring with any individual with disabilities.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
EVALUATIONS CONT.	No provision is made for independent evaluations at the school expense. The school district should consider other evaluations and information regarding the student.	Provides for independent educational evaluation. A due process hearing is available if the school and parent disagree on the need for an independent evaluation.	
SERVICES	When interpreting evaluation data and making service decisions, both laws require schools to: * Draw upon information from a variety of sources. * Assure that all information is documented and considered. * The service decision is made by a group of persons including those who are knowledgeable about the student, disability, the meaning of the evaluation data, and placement options. * Ensure that the student is educated with his/her nondisabled peers to the maximum extent appropriate. * Requires notice and evaluation before any change of services.		
REVIEW OF PROGRAM	Accommodations should be reviewed periodically.	An IEP review meeting is required at least annually, or before any significant change.	
GRIEVANCE PROCEDURES	Requires schools to provide a grievance procedure for parents, students, and employees.	Does not require a grievance procedure. Complaints can be filed with the state education office.	The school shall adopt and publish grievance procedures for resolution of ADA complaints.
COMPLAINT PROCEDURES	An individual or organization may file a complaint with the Office for Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases OCR will consider complaints where more than 180 days have elapsed.	A formal complaint process is required. Parents can file a complaint with the school and a decision must be provided within 60 days.	An individual or organization may file a complaint with the Office for Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases, OCR will consider complaints where more than 180 days have elapsed.

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ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
DUE PROCESS	Both statutes require schools to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of student with disabilities. Schools or parents can initiate due process hearings. Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details.		Due process hearings can be initiated by either party. The court may allow a reasonable attorney's fee for the prevailing party.
MEDIATION	Not required; however, mediation should always be suggested.	Mediation must be offered as an option, but not required.	Not required; however, mediation should always be suggested.
EXHAUSTION	Administrative hearing is not required prior to OCR involvement or court action.	The parent or guardian must exhaust all administrative hearings before seeking court action.	An administrative hearing is not required prior to OCR involvement or court action.
ENFORCEMENT	Enforced by the U.S. Office for Civil Rights. Regional offices are located throughout the United States. The office is part of the U.S. Department of Education. The regional office is located at 1244 Speer Boulevard, Suite 310, Denver, Colorado, 80204-3582. Phone 303-844-5695.	Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by the State Office of Special Education Programs. The Utah State Office of Education will resolve complaints under Individuals with Disabilities Education Act.	Enforced by the U.S. Office for Civil Rights under an agreement with EEOC.

Issues	Section 504	Individuals With Disabilities Education Act	Americans with Disabilities Act
DISCIPLINE OF STUDENTS WITH DISABILITIES	The exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 school days constitutes a "significant change in placement." Before implementing a suspension or expulsion that constitutes a significant change in the student's placement, the school must conduct an evaluation to determine if the behavior was caused by the disability. If there is no relationship between the disability and the behavior, the school can expel the student. The school is not required to provide services and/ or accommodations during the expulsion period.	The exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 school days constitutes a "significant change in placement." Before implementing a suspension or expulsion that constitutes a significant change in the student's placement, the school must conduct an evaluation to determine if the behavior was caused by the disability. If there is no relationship between the disability and the behavior, the school can expel the student but still needs to provide a free appropriate public education. This means special education services outlined in the IEP.	

PROCEDURAL REQUIREMENTS

SCHOOL PROCEDURAL REQUIREMENTS OF SECTION 504/ADA*

To be in compliance with Section 504/ADA, schools must do the following:

1. Provide written assurance of nondiscrimination whenever the school receives federal money (e.g., on the LEA application). [34 CFR § 104.5(a)] ***(see Page 33)***
2. Designate an employee to coordinate compliance with Section 504/ADA (if there are more than 15 employees). [34 CFR § 104.7(a)] ***(see Page 33)***
3. Provide grievance procedures to resolve complaints of discrimination (if more than 15 employees). This does not apply to denial of employment. [34 CFR § 104.7(b)] (see ***Pages 34–36*****)**. Mediation, complaint process, and due process hearings. **(see *Pages 37–38*)**
4. Provide notice to students and parents. A separate notice should be available for employees, unions, and professional organizations of nondiscrimination in admission or access to, treatment, and employment in its programs or activities (if more than 15 employees). Notice must be included in student/parent handbook. [34 CFR §104.8] ***(see Page 39)***
5. The school will identify and locate qualified children with disabilities within their jurisdiction. ***(see Page 40)***
6. Annually notify persons with disabilities and their parents or guardians of the school's responsibilities under Section 504/ADA. [34 CFR § 104.32(b)] ***(see Page 41)***
7. Provide parents or guardians with procedural safeguards: ***(see Page 42)***
    a. Notice of their rights.
    b. An opportunity to review relevant records.
    c. An impartial hearing: It is important that parents or guardians be notified of their right to request a hearing regarding the identification, evaluation, or educational placement of individuals with disabilities. [34 CFR § 104.36]
    d. Review procedures: Compliance with the procedural safeguards under special education is one way of meeting these requirements.
8. Conduct a self-evaluation of the school facilities, programs, and policies to ensure that discrimination is not taking place. (34 CFR § 104.6 (c). This study should be conducted with the assistance of interested persons, including persons with disabilities.

    (see Page 43)

**Adapted from Perry Zirkel*

The next few pages will clarify these procedures for complying with requirements under Section 504/ADA.

PROCEDURE ONE: WRITTEN ASSURANCE OF NONDISCRIMINATION

Whenever a school applies for state or federal monies, it must assure that it does not discriminate on the basis of race, sex, color, national origin, age, or disability. This requirement is done routinely by all schools.

PROCEDURE TWO: SECTION 504 COORDINATOR

The general provisions of Section 504/ADA, together with other federal nondiscrimination laws, require the designation of a person to coordinate the school's efforts to comply with these laws. Coordination activities could include some or all of the following:

Suggested Responsibilities of the Section 504/ADA Coordinator:

- Ensure nondiscriminatory educational practices.
- Establish and monitor a Section 504/ADA referral/identification/review process.
- Maintain data on Section 504/ADA referrals.
- Conduct staff and parent awareness and training activities concerning Section 504/ADA requirements.
- Implement Section 504/ADA grievance procedures.
- Monitor Section 504/ADA budget.
- Consult with the director of special education.
- Serve as a school liaison with the state Section 504/ADA coordinator.
- Serve as the school liaison with the Regional Office for Civil Rights.

The Section 504/ADA coordinator could be someone already employed by the school. A general education administrator or school counselor who is knowledgeable about federal laws and regulations would be preferred.

PROCEDURE THREE: GRIEVANCE PROCEDURES

Section I

If any person believes that the school or any of the school's staff have inadequately applied the regulations of (1) Title VI of the Civil Rights Act of 1964, (2) Title IX of the Education Amendment Act of 1972, (3) Section 504 of the Rehabilitation Act of 1973, or (4) the Americans with Disabilities Act, he/she may bring forward a grievance to the school's Section 504/ADA coordinator. It should be understood by the individual(s) involved that a complaint can be made to the Office for Civil Rights without going through the school's grievance procedures. The grievance procedures are to provide for a prompt and equitable resolution of a complaint.

Section II

The school 504 coordinator, on request, will provide a copy of the school's grievance procedure and investigate all complaints in accordance with this procedure. The grievance procedure should include a statement that a copy of each of the acts and the regulations on which this notice is based, may be found in the coordinator's office.

The person who believes he/she have been discriminated against based on disability shall discuss the grievance and give the completed grievance form to the school Section 504/ADA coordinator who shall in turn investigate the complaint and reply with an answer to the complaint.

Step 1

A written grievance form signed by complainant shall be submitted to the school Section 504/ADA coordinator. The coordinator shall further investigate the matters of grievance and reply in writing to the complainant within 10 business days.*

Step 2

If the complainant wishes to appeal the decision of the school Section 504/ADA coordinator, he/she may submit a signed statement of appeal to the superintendent of schools within 10 business days* after receipt of the coordinator's response. The coordinator and superintendent cannot be the same individual. The superintendent shall meet with all parties involved, formulate a conclusion, and respond in writing to the complainant within 10 business days.*

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* *These are suggested grievance timelines. If the superintendent also serves as the Section 504/ADA coordinator, the appeal must go to another individual or the school board.*

Step 3

If the complainant remains unsatisfied, he/she may appeal through a signed written statement to the local board of education within 10 business days of his/her receipt of the superintendent's response in step two. In an attempt to resolve the grievance, the board shall meet with the concerned parties and their representative within 40 days of the receipt of such an appeal. A copy of the board's disposition of the appeal shall be sent to each concerned party within 10 business days of this meeting.

Step 4

The complainant may file a complaint with the Office for Civil Rights at any time before or during the grievance procedures: Office for Civil Rights, Federal Building, Suite 310, 1244 Speer Boulevard, Denver, CO 80204-3582. (303) 844-5695, TTY (303) 844-3417.

SECTION 504/ADA
DISCRIMINATION/GRIEVANCE FORM

Date ____________________

Name ____________________________________ Title ________________________

Student ____

Address ____

____

Phone ____

1. **Summary of Grievance** — What is the problem?

____

____

____

2. How can the problem be solved?

____

____

____

3. Please describe any corrective action you wish to see taken with regard to the possible violation. You may also provide other information relevant to this grievance.

____

____

____

4. If others are affected by the possible violation, please give their names and/ or positions.

____

____

____

____

Signature of Parent Date

____

Signature of Section 504 Coordinator Date

MEDIATION

Most of the time parents and school staff agree upon issues regarding evaluation, eligibility, program, and placement of students with disabilities. However, there are times when disagreement occurs.

Conflict is often inevitable, but it need not produce negative results. If the parent and school are unable to resolve a conflict concerning a student with a disability, then mediation is an available alternative to a long and expensive due process hearing.

The mediator is a neutral third party and, therefore, has no power to make a decision regarding the dispute. He or she will listen to the views of each party and will assist in developing an acceptable solution to the problem. The mediator has been trained to handle Section 504 disputes.

Mediation is completely voluntary. It should not interfere with any procedural safeguards, including a request for a due process hearing or filing a complaint with OCR. **Mediation costs are the responsibility of the school.**

A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the student. This occurs at a non-adversarial meeting that is more structured than a parent-school conference, but less formal than a due process hearing.

If you have any questions after reviewing these materials, please do not hesitate to contact the school Section 504/ADA coordinator or the Utah State Office of Education.

Parents and schools are encouraged to try mediation before relying on more formal procedures such as the grievance procedures, complaints to OCR, or due process hearings.

OFFICE FOR CIVIL RIGHTS COMPLAINT PROCESS

An individual or an organization may file a complaint with the regional Office for Civil Rights (OCR) in Denver, Colorado. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases, OCR will consider complaints where more than 180 days have elapsed.

Anyone wishing to file a formal complaint with OCR should submit in writing the following information in a letter or on the Discrimination Complaint Form available from OCR regional offices:

- Your name and address (a telephone number where you may be reached during business hours is helpful, but not required).
- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required).
- The name and location of the institute that committed the alleged discriminatory act(s).
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination (race, sex, color, national origin, age, or disability).

A school may not retaliate against any person who has made a complaint, testified, assisted, or participated in any manner in an investigation.

SECTION 504
DUE PROCESS HEARING PROCEDURE

DUE PROCESS is defined here as an opportunity to present objections and reasons for the objections to the decisions and/or procedures used by the school under Section 504. A Section 504 due process hearing may be called:

> *At the request of the school, or a parent, a guardian, or surrogate parent of the student.*

The proceedings will be presided over and decided by an impartial hearing officer. An impartial hearing officer is a person selected to preside at a due process hearing to assure that *proper procedures are followed and to assure the protection of the rights of both parties.*

A copy of the hearing officer's decision shall be delivered to the school and the parent or guardian following completion of the hearing which in no event shall be later **than 45 days** after receipt of the request for a hearing.

A written or verbatim recording of the due process hearing shall be on file at the school office and shall be available for review upon request to the parents or involved parties.

It is important that **parents or guardians** be notified of their right to request a hearing regarding the identification, evaluation, or educational placement of persons with disabilities.

If the school proposes to change the student's placement and the parent files a request for a hearing, the school is obligated to maintain the student's placement until administrative proceedings are completed.

PROCEDURE FOUR: GENERAL NOTICE TO STUDENTS, PARENTS, EMPLOYEES, AND OTHER INDIVIDUALS

Example

SECTION 504 OF THE REHABILITATION ACT AND AMERICANS WITH DISABILITIES ACT

NOTICE OF NONDISCRIMINATION

Applicants for admission and employment, students, parents, persons with disabilities, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the ______________________ are hereby notified that this school does not discriminate on the basis of race, sex, color, national origin, age, or disability in admission or access to, or treatment or employment in, its programs and activities. Any person having inquiries concerning the school's compliance with the regulations implementing Title VI, Title IX, The Americans with Disabilities Act (ADA) or Section 504 is directed to contact:

____

____

____

who has been designated by the school to coordinate efforts to comply with the regulations regarding nondiscrimination.

***Recommendations for notice dissemination:**

- Staff, parent, and student handouts
- Letterheads
- Staff workrooms
- Bulletin boards
- Included on professional contracts
- Included on job announcements
- Annual mailing to staff
- School district website

PROCEDURE FIVE: LOCATE AND IDENTIFY

The school shall maintain an ongoing program to find unserved children who might qualify for special education and Section 504/ADA services. To encourage the use of services and ongoing assistance at the earliest age possible, the following methods could be used to identify unserved children:

- Utilize the existing special education child find process; just add Section 504 language to the school's notice and announcements.
- A series of spot announcements on all local news media.
- A series of posters to be placed in post offices, city hall, schools, and other public buildings.
- Distribution of a referral form to such public and private agents as hospital administrators, public health officers, social welfare offices, private medical practitioners, public nursery schools, and/or child-care and Head Start directors. Referrals should be made to the special education director, or Section 504/ADA coordinator, for appropriate action.

It is recommended that the school district combine the special education and Section 504 Child Find procedures. Costs should be shared between special and general education budgets.

PROCEDURE SIX: NOTICE TO INDIVIDUALS WITH DISABILITIES AND PARENTS

Example

NOTICE

Programs for Students with Disabilities under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act prohibit discrimination against persons with a disability in any program receiving federal financial assistance. Section 504/ADA defines a person with a disability as anyone who:

> Has a mental or physical impairment which substantially limits one or more major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The school has the responsibility to provide accommodations and services to eligible individuals with disabilities.

The school acknowledges its responsibility under Section 504/ADA to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability shall knowingly be permitted in any program or practice in the school.

***Recommendations for notice dissemination:**

- Upon referral to parents
- School district website
- Letterheads
- Staff workrooms
- Bulletin boards
- Included on professional contracts
- Included on job announcements
- Annual mailing to staff

PROCEDURE SEVEN: PARENTS AND STUDENT RIGHTS UNDER SECTION 504/ADA

Example

The following is a description of student and parent rights under Section 504 and other federal laws. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the right to:

1. Have your child take part in and receive benefits from public education programs without discrimination based on a disability.
2. Receive notice with respect to identification, evaluation, program, or placement of your child.
3. Have your child receive a free appropriate public education. This includes the right to be educated with other students to the maximum extent appropriate. It also includes the right to have the school make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.
4. Have your child educated in facilities and receive services comparable to those provided for students without disabilities.
5. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by individuals who know the student, disability, evaluation data, and placement options.
6. Give your child an equal opportunity to participate in nonacademic and extracurricular activities offered by the school.
7. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement.
8. File a local grievance with your school if you feel your child is being discriminated against because of their disability.
9. Request a due process hearing to help resolve issues with the school.
10. File a formal complaint with the regional Office for Civil Rights. The office is part of the U.S. Department of Education. The regional office is located at 1244 Speer Boulevard, Suite 310, Denver, Colorado, 80204-3582.

PROCEDURE EIGHT: SELF-EVALUATION

A self-evaluation to determine possible discrimination involving school facilities, programs, activities, and policies is a requirement of both Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. Any school that employs 15 or more employees shall conduct such an evaluation and develop a transition plan that outlines how the school will eliminate any form of discrimination. The self-study should be on file and available for public inspection.

The following are key considerations when conducting the self-evaluation:

- Evaluate facilities, programs, and policies for possible discriminatory practices.
- Involve other individuals, including persons with disabilities.
- Develop a Section 504/ADA transition plan that outlines any modifications that will be necessary. This plan identifies facilities, programs, and policies that could be discriminatory, and how the school intends to solve the problems.
- Modify any policies, facilities, or practices that do not meet the requirements of Section 504 or ADA, after consultation with others, including persons with disabilities.
- Take appropriate remedial steps to eliminate the effects of any discrimination resulting from policies and practices.
- Keep a copy of the self-evaluation on file for public inspection.
- Conduct periodic updates of the self-evaluation.
- Ensure all new policies are nondiscriminatory.
- Ensure all new facilities are accessible for individuals with disabilities.

School districts should request comprehensive instructions and forms to conduct a self-assessment for the Utah State Office of Education or Office for Civil Rights.

ELIGIBILITY AND DETERMINATION OF SERVICES

General Procedures: An Overview

If the school has reason to suspect that because of a disability a student needs accommodations in the general educational environment in order to have equally effective participation in the school program, the school must notify the parent of an individual evaluation, evaluate the student, and develop and implement a plan for the delivery of all necessary educational accommodations. Requirements for the evaluation and placement process are determined by the type of disability suspected and the type of services needed by the student. The evaluation must be sufficient to assess the nature and extent of the educational impact of the disability so that appropriate educational services can be determined. The team knowledgeable about the student makes the decision based on evaluation data. Identification of services needed must be made by a group of persons knowledgeable about the student. Decisions about Section 504/ADA eligibility must be documented in the student's Section 504/ADA file and reviewed at least yearly and whenever any member of the team feels it necessary. A case manager should be assigned to complete and manage each Section 504/ADA student file. A student's program must be provided in the least restrictive environment, most likely, the general education classroom.

Under Section 504/ADA, parents or guardians must be provided with notice of any action that changes the identification, evaluation program, or placement of their child. Written consent would be considered a **best practice**. The parents should be included in the evaluation, eligibility, and placement process. Parents or guardians have the right to file a grievance, request mediation, ask for a due process hearing, or call the regional Office for Civil Rights in Denver, Colorado, if they disagree with the school.

— BEST PRACTICE —

Parent participation should always be encouraged throughout the Section 504/ADA process.

SECTION 504 ELIGIBILITY

The following is the eligibility criteria for a student to receive accommodations under Section 504.

A person may be considered disabled under the definition of Section 504/ADA if the individual:

1. Has a mental or physical impairment that substantially limits one or more of such person's major life activities and impacts the student's educational program.

"Major life activities" include functions such as:

- caring for one's self
- walking
- seeing
- speaking
- learning
- performing manual tasks
- hearing
- breathing
- working

When a condition does not substantially limit a major life activity, the individual does not qualify for services under Section 504/ADA. The condition must impact the child's educational program.

2. Has a record of such an impairment.

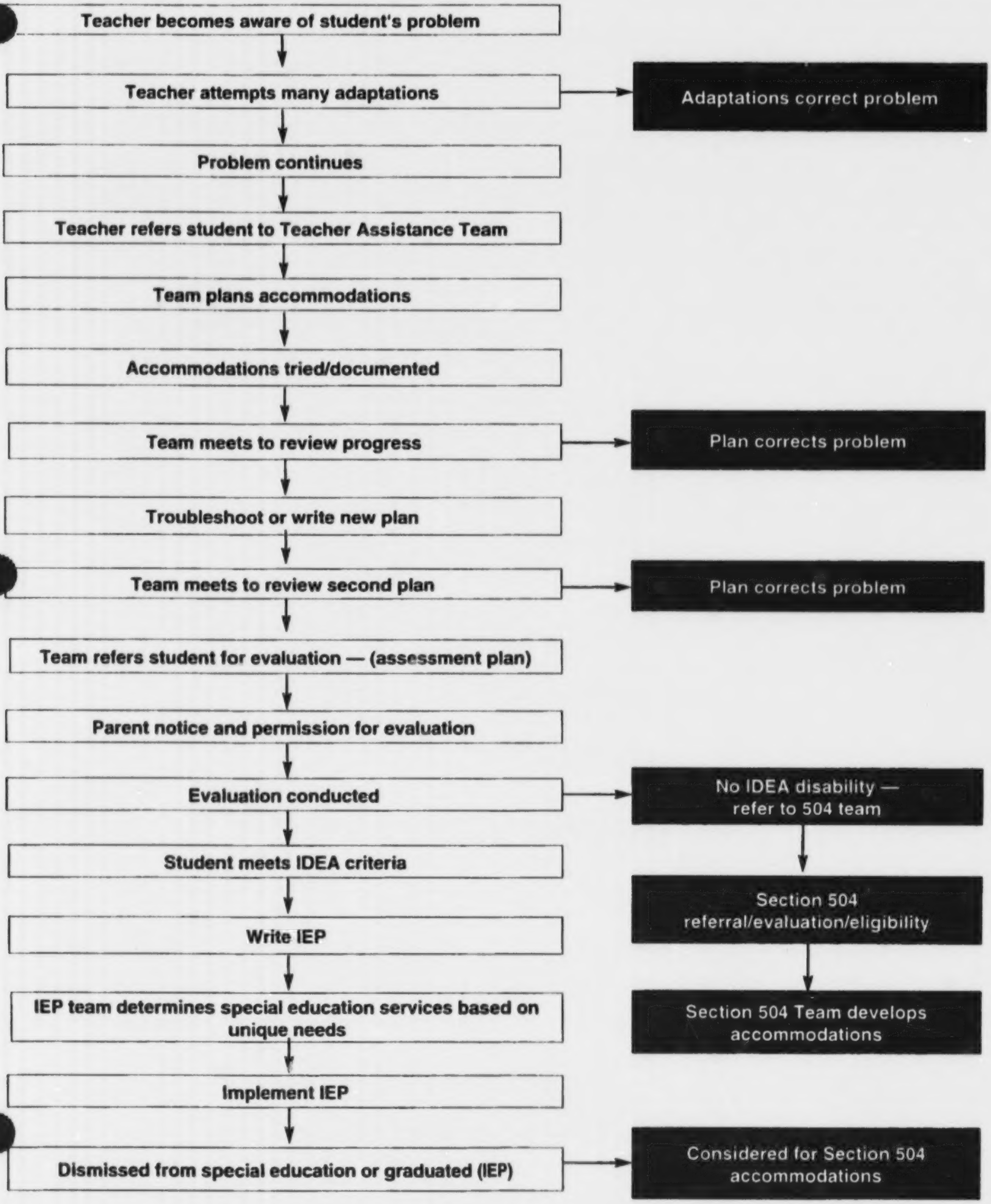
3. Is regarded as having such an impairment.

The second and third prongs of the definition only become a factor if discrimination has occurred because of the "record" or "history" or is regarded as having an impairment. (See Appendix C, OCR policy letter.)

RED FLAGS FOR CONSIDERING POSSIBLE ACCOMMODATIONS AND/OR SERVICES UNDER SECTION 504/ADA:

- When a **parent** frequently expresses a concern about their child's performance.
- When **suspension or expulsion** is being considered for any student.
- When **retention** is being considered for any student.
- When a student shows a pattern of **not benefiting from instruction.**
- When a student returns to school after a **serious illness or injury**.
- When a student is **referred for evaluation**, but it is determined not to do an evaluation under the **IDEA**.
- When a student is evaluated and **does not qualify for special education** services under the **IDEA**.
- When a student **exhibits a chronic health condition**.
- When a student has been identified as having **attention deficit disorder (ADD)** or **attention deficit hyperactivity disorder (ADHD).**
- When a student is identified as "**at risk**" or exhibits the potential for dropping out of school.
- When **substance abuse** is an issue. The individual must have stopped using the substance and should either be in rehabilitation or have gone through the rehabilitation process.
- When a **disability** of any kind is known or suspected.
- When a new **building or remodeling** is being considered.
- When a student has a **parent with a disability.**

PROCESS FOR THE DETERMINATION OF SERVICES


Teacher becomes aware of student's problem
Teacher attempts many adaptations
Adaptations correct problem
Problem continues
Teacher refers student to Teacher Assistance Team
Team plans accommodations
Accommodations tried/documented
Team meets to review progress
Plan corrects problem
Troubleshoot or write new plan
Team meets to review second plan
Plan corrects problem
Team refers student for evaluation — (assessment plan)
Parent notice and permission for evaluation
Evaluation conducted
No IDEA disability — refer to 504 team
Student meets IDEA criteria
Section 504 referral/evaluation/eligibility
Write IEP
IEP team determines special education services based on unique needs
Section 504 Team develops accommodations
Implement IEP
Dismissed from special education or graduated (IEP)
Considered for Section 504 accommodations

SUGGESTED PROCESS FOR DETERMINING SERVICES

The Section 504/ADA coordinator and school staff should ensure that the following process has occurred.

General Education Interventions

1. If a student experiences educational difficulties, a teacher assistance team meets to discuss the concerns.
2. The team suggests intervention strategies to help correct the difficulties. The primary function of the team is to offer assistance to teachers.
3. If the strategies are unsuccessful, the team can make a referral for evaluation to Section 504/ADA, special education, or Title 1.

Referral

4. Referrals are accepted from parents and/or the teacher assistance team.
5. The presenting problem(s) and previous remedies are considered and reviewed. The summary should include all current information and recommendations.

Notification

6. The school notifies the parents, in writing, of the school's reason and intent to conduct an evaluation. The notice should include a description of the evaluation and of procedural safeguards.

Written Consent

7. Even though Section 504/ADA does not require written consent before the initial evaluation, consent should always be considered a **best practice**.

Evaluation

8. The school evaluates a student suspected of having a disability before making an initial provision for services or any subsequent, significant change in his or her services.

Eligibility

9. Section 504/ADA team—a recommended strategy is to use the teacher assistance team as the Section 504/ADA team. The team meets and analyzes the evaluation data to determine if the individual has a mental or physical impairment that substantially impairs a major life activity and impacts education.

Written Consent

10. Even though Section 504/ADA does not require written consent before the initial service, consent should always be considered a **best practice**.

Services

11. These factors were considered by a group of individuals knowledgeable about the student, disability, evaluation, and service options:
    a. Evaluation results
    b. Section 504/ADA eligibility
    c. The student's unmet needs
    d. Services and/or accommodations based on eligibility
    e. Least restrictive environment for services
    f. Discuss and plan possible staff inservice

Implementation

12. The school staff makes the necessary accommodations/services to allow for the student's disability. Parents should be consulted and given opportunity for input regarding the accommodations.

13. The accommodations and/or services are implemented.

Review

14. Each student's accommodations and/or services are reviewed periodically.

— BEST PRACTICE —

The team should review the accommodations at least annually.

SECTION 504 ACCOMMODATIONS/SERVICES

The following is a list of possible strategies and accommodations for eligible students. Each case must be considered based upon the unique needs of the student.

Environmental Strategies

- Provide a structured learning environment.
- Adjust class schedule.
- Provide classroom aides and note takers.
- Modify nonacademic times such as lunch room and recess.
- Modify physical education.
- Change student seating.
- Provide use of a study carrel.
- Alter location of personal or classroom supplies for easier access or to minimize distraction.

Organizational Strategies

- Modify test delivery.
- Use tape recorders, computer-aided instruction, and other audiovisual equipment.
- Select modified textbooks or workbooks.
- Tailor homework assignments.
- Use of one-to-one tutorials.
- Provide peer tutoring.
- Set time expectations for assignments.

- Provide tests in segments so that student finishes one segment before receiving the next part.
- Highlight main ideas and supporting details in the book.

Behavior Strategies

- Use behavioral management techniques.
- Implement behavioral/academic contracts.
- Utilize positive reinforcements (rewards).
- Utilize negative reinforcements (consequences).
- Confer with the student's parents and other teachers.
- Establish a home/school communication system for behavior monitoring.
- Post rules and consequences for classroom behavior.
- Write a contract for student behavior.
- Offer social reinforcers (i.e., praise) for appropriate behavior.
- Establish daily/weekly progress report for the student.
- Implement self-recording of behaviors.

Presentation Strategies

- Tape lessons for the student.
- Provide photocopied material for extra practice (i.e., outlines, study guides).
- Require fewer drill and practice activities.
- Give both oral and visual instructions for assignments.
- Vary the method of lesson presentation:
  a. lecture
  b. small groups

c. large groups
d. use audio visuals (i.e., filmstrips, study prints)
e. peer tutors or cross-age tutors (i.e., take notes, monitor assignments, read aloud, listen)
f. demonstrations
g. experiments
h. simulations
i. games
j. one-to-one instruction with other adult

- Provide for oral testing.

- Ask student to repeat directions/assignments to insure understanding.

- Arrange for a mentor to work with student in his or her interest area or area of greatest strength.

Methodology Strategies

- Repeat and simplify instructions about in-class and homework assignments.

- Supplement oral instructions with visual instructions.

- Change instructional pace.

- Change instructional methods.

Curriculum Strategies

- Assess whether student has the necessary prerequisite skills. Determine whether materials are appropriate to the student's current interest and functioning levels.

- Utilize supplementary materials.

- Implement study skill strategies (survey, read, recite, review). Introduce definition of new terms/vocabulary and review to check for understanding.

- Limit amount of material presented on a single page.

- Provide a sample or practice test.

- Be aware of student's preferred learning style and provide appropriate instruction/materials.

100 effective accommodations/services for students experiencing academic and/or behavioral difficulties.

1. Provide study carrels.
2. Use room dividers.
3. Provide headsets to muffle noise.
4. Seat child away from doors/windows.
5. Seat near model (student or teacher).
6. Provide time-out area.
7. Rearrange student groups (according to instructional needs, role models, etc.).
8. Group for cooperative learning.
9. Vary working surface (e.g., floor or vertical surface such as blackboards).
10. Simplify/shorten directions.
11. Give both oral and written directions.
12. Have student repeat directions.
13. Have student repeat lesson objective.
14. Ask frequent questions.
15. Change question level.
16. Change response format (e.g., from verbal to physical, from saying to pointing).
17. Provide sequential directions (label as first, second, etc.).
18. Use manipulatives.
19. Alter objective criterion level.
20. Provide functional tasks (relate to child's environment).
21. Reduce number of items on a task.
22. Highlight relevant words/features.
23. Use rebus (picture) directions.
24. Provide guided practice.
25. Provide more practice trials.
26. Increase allocated time.
27. Use a strategy approach.
28. Change reinforcers.
29. Increase reinforcement frequency.
30. Delay reinforcement.
31. Increase wait time.
32. Use physical warm-up exercises.
33. Use specific rather than general praise.

34. Have a peer tutor program.
35. Provide frequent review.
36. Have student summarize at end of lesson.
37. Use self-correcting materials.
38. Adapt test items for differing response modes.
39. Provide mnemonic devices.
40. Provide tangible reinforcers.
41. Use behavioral contracts.
42. Establish routines for handing work in, heading papers, etc.
43. Use timers to show allocated time.
44. Teach self-monitoring.
45. Provide visual cues (e.g., posters, desktop number lines, etc.).
46. Block out extraneous stimuli on written material.
47. Tape record directions.
48. Tape record student responses.
49. Use a study guide.
50. Provide critical vocabulary list for content material.
51. Provide essential fact list.
52. Use clock faces to show classroom routine times.
53. Use dotted lines to line up math problems or show margins.
54. Provide transition directions.
55. Assign only one task at a time.
56. Provide discussion questions before reading.
57. Use word markers to guide reading.
58. Alter sequence of presentation.
59. Enlarge or highlight key words on test items.
60. Provide daily and weekly assignment sheets.
61. Post daily/weekly schedule.
62. Use graph paper for place value or when adding/subtracting two-digit numbers.
63. Provide anticipation cues.
64. Establish rules and review frequently.
65. Teach key direction words.
66. Use distributed practice.
67. Provide pencil grips.

68. Tape paper to desk.
69. Shorten project assignment into daily tasks.
70. Segment directions.
71. Number (order) assignments to be completed.
72. Change far-point to near-point material for copying or review.
73. Put desk close to blackboard.
74. Incorporate currently popular themes/characters into assignments for motivation.
75. Repeat major points.
76. Use physical cues while speaking (e.g., 1, 2, 3, etc.).
77. Pause during speaking.
78. Use verbal cues (e.g., "Don't write this down," " This is important").
79. Change tone of voice, whisper, etc.
80. Use an honor system.
81. Collect notebooks weekly (periodically) to review student notes.
82. Reorganize tests to go from easy to hard.
83. Color code place value tasks.
84. Use self-teaching materials.
85. Do only odd or even numbered items on a large task sheet.
86. Use a primary typewriter or large print to create written material.
87. Provide organizers (e.g., cartons/bins) for desk material.
88. Teach varied reading rates (e.g., scanning, skimming, etc.).
89. Provide content/lecture summaries.
90. Use peer-mediated strategies (e.g., "buddy system").
91. Call student's name before asking a question.
92. Use extra spaces between lines of print.
93. Color code materials/directions.
94. Use raised-line paper.
95. Provide calculators.
96. Circle math computation sign.
97. Use hand signals to cue behavior (e.g., attention, responding).
98. Establish a rationale for learning.
99. Use advance organizers.
100. Help students develop their own learning strategies.

EXAMPLES OF DISABILITIES AND ACCOMMODATIONS

The Section 504 accommodations/services a student receives will be based upon the unique needs identified during the evaluation process. Many accommodations listed could be the parents' or students' responsibility.

These disabilities could also be covered by Section 504/ADA if the condition is substantially limiting to a major life activity and impacts education.

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

EXAMPLE: The student frequently misses school and does not have the strength to attend a full day. This student has a disability that substantially limits the life activities of learning and caring for one's self.

Possible Accommodations:

- Develop health care and emergency plan.
- Apply universal precautions.
- Administer medications, if necessary.
- Adjust attendance policies.
- Adjusted schedule or shortened day.
- Provide rest periods.
- Adapt physical education curriculum.
- Establish routine communication with health professionals, school nurse, and home.
- Meet with doctor, parents, teachers, and administrators.
- Provide two way audio/video link between home and classroom.
- Arrange for an adult tutor at school or home.
- Modify assignments and tests.

- Provide education and support for peers regarding issues of death and dying.
- Tape books or provide a personal reader.
- Provide a home computer with e-mail.
- Arrange for a support group.
- Develop and promote nondiscriminatory classroom climate and supportive student attitudes.
- Initiate a "Kids on the Block" disability awareness program.
- Videotape classroom teacher.
- Provide a peer support group to encourage communication.
- Furnish homebound services for extended periods of illness.

ALLERGIES

EXAMPLE: The student has severe allergic reactions to certain pollens and foods. The condition is substantially limiting to the major life activity of breathing.

Possible Accommodations:

- Avoid allergy causing substance: soap, weeds, perfumes, pollen, and food.
- Provide clean rooms and avoid rooms with carpet.
- Allow time for shots/clinic appointments.
- Use air purifiers.
- Adapt physical education curriculum during high pollen time.
- Improve room ventilation. (When remodeling has occurred and materials may cause an allergy.)

ARTHRITIS

EXAMPLE: A student with arthritis may have persistent pain, tenderness or swelling in one or more joints. A student experiencing arthritic pain may require a modified physical education program. The condition is substantially limiting to the major life activity of performing manual tasks.

Possible Accommodations:

- Develop health care plan and emergency plan.
- Provide a rest period during the day.
- Accommodate for absences for doctor's appointments.
- Provide assistive devices for writing (e.g., pencil grips, non-skid surface, typewriter/computer, etc.).
- Modify physical education curriculum.
- Administer medication, if necessary.
- Arrange for assistance with carrying books, lunch tray, etc.
- Provide book caddy.
- Implement movement plan to avoid stiffness.
- Provide seating accommodations.
- Allow extra time between classes.
- Provide locker assistance.
- Provide modified eating utensils.
- Make available access to wheelchair/ramps and school van for transportation.
- Provide time for exercises that may be needed.
- Modify recess time.
- Provide peer support groups.

- Arrange for someone else to take notes.
- Install handle style door knobs (openers).
- Record lectures/presentations.
- Have teacher provide outlines of presentation.
- Issue Velcro fasteners for bags, shoes, coats.
- Obtain padded chairs.
- Provide a more comfortable style of desk.
- Adjust attendance policy, if needed.
- Furnish a warmer room and sit student close to the heat.
- Supply an extra set of books for home use and keep a set at school.
- Let student give reports orally rather than written.
- Modify the school curriculum, as necessary, i.e., in band assist in selecting instrument student can play.
- Make any needed bathroom accommodations.
- Accommodate for writing with a computer and notetaking with a tape recorder.

ASTHMA

EXAMPLE: A student has been diagnosed as having asthma. The doctor has advised the student not to participate in physical activity outdoors. The disability limits the major life activity of breathing. The school is required to make reasonable accommodations in the education program.

Possible Accommodations:

- Develop health care and emergency plan.
- Modify activity level for recess, physical education, etc.
- Use air purifier or inhalants.
- Remove allergens (e.g., hairspray, lotions, perfumes).
- Accommodate medical absence; arrange transportation to home/clinic.

- Provide education to peers/teachers/others (bus drivers, cooks, etc.).
- Provide access to water, gum, etc.
- Provide compensation if individual misses an excessive amount of school.
- Have peers available to carry materials to and from classes (e.g., lunch tray, books).
- Provide rest periods.
- Make school health care needs known to appropriate staff.
- Modify field trip experiences.
- Provide indoor space before and after school.
- Arrange for access to wheelchair for transition purposes.
- Have a locker location that is centralized and free of atmosphere changes.
- Modify attendance policies.
- Modify certain learning activities.

ATTENTION DEFICIT DISORDER (ADD) AND ATTENTION DEFICIT HYPERACTIVITY DISORDER (ADHD)

EXAMPLE: The student does not meet eligibility requirements under IDEA as emotionally disturbed, learning disabled or other health impaired. The student is regarded as having ADD by a doctor, and the disability limits the major life activity of learning.

Possible Accommodations:

- Adjust student seating.
- Use simple, concise instructions.
- Provide a peer tutor/helper.

- Administer medication, if necessary.
- Modify assignments.
- Change instructional pace.
- Provide supervision during transitions, disruptions, field trips.
- Use study guides, organizing tools.
- Modify testing procedures.
- Initiate frequent parent communication.
- Establish a school/home behavior management program.
- Provide training for staff and parents.
- Have the student use an organizer—train in organizational skills.
- Establish a cue between teacher and student.
- Assign chores/duties around room/school.
- Modify environment to avoid distractions.
- Have child work in a study carrel.
- Highlight required or important information/directions.
- Place assignments/directions on tape for auditory learner.
- Provide a checklist for student, parents, and/or teacher to record assignments or completed tasks.
- Use a timer to assist student to focus on given task or number of problems in time allotted — *stress* they need to be done *correctly.*
- Have student restate or write directions/instructions.
- Allow student to respond in a variety of different modes (i.e., may place answers for tests on tape instead of paper).
- Give student opportunity to stand while working.

- Provide additional supervision to and from school.
- Modify student's work area with barriers.
- Prescribe physical activity, exercise, etc.
- Determine trigger points and prevent action leading to trigger points.

CANCER

EXAMPLE: A student with a long term medical problem may be given considerations to accommodate special needs. For example, a student with cancer may need a class schedule that allows for rest and recuperation following chemotherapy. The condition is substantially limiting to the major life activity of caring for one's self.

Possible Accommodations:

- Develop health care and emergency plan.
- Provide school nursing services.
- Apply universal precautions.
- Adjust attendance policies.
- Limit number of classes taken; accommodate scheduling (breaks, etc.).
- Provide homebound services as appropriate.
- Accommodate student's involvement in extracurricular activities.
- Adjust activity level and expectations in classes based on physical limitations.
- Schedule daily monitoring and distribution of medications.
- Provide appropriate assistance technology.
- Provide dietary accommodations.
- Shorten day; arrange for home tutoring following treatment.

- Provide additional set of texts and assignments to hospital school.
- Tape lessons.
- Modify schedule to include rest breaks.
- Provide counseling; establish peer support group.
- Adapt physical education.
- Provide access as needed to school health services.
- Provide awareness training to staff and students.
- Offer school counseling on death and dying.
- Furnish a peer tutor.
- Adapt work load.
- Provide student with a separate bathroom.
- Provide an interactive computer/modem.
- Set up crisis teams.
- Instigate a free pass system from the classroom.
- Modify requirements for graduation.

CEREBRAL PALSY

EXAMPLE: The student has serious difficulties with fine and gross motor skills. A wheelchair is used for mobility. Cognitive skills are very good. The condition is substantially limiting to the major life activity of walking.

Possible Accommodations:

- Develop health care and emergency plan.
- Provide assistive technology devices.
- Arrange for use of ramps and elevators.

- Assist with carrying books, lunch trays, etc.
- Modify physical education curriculum.
- Provide for physical therapy.
- Monitor medication administration.
- Modify eating utensils.
- Educate peers/staff.

CONDUCT DISORDER

EXAMPLE: The student exhibits poor peer interactions, has no friends and isolates himself from group activities. The condition is substantially limiting to the major life activity of learning.

Possible Accommodations:

- Teach cooperative learning strategies within the classroom.
- Work with the family to implement a home/school behavior plan.
- Provide school counseling.
- Implement a behavior management plan.
- Provide information in a big brother/sister program.
- Provide extra-curricular activities that interest the student.
- Provide peer support groups.
- Begin social skills instruction.
- Monitor and/or administer needed medications, as prescribed.
- Teach appropriate social skills.

DRUGS AND ALCOHOL

EXAMPLE: The student has used drugs and alcohol for many years. This problem has affected the major life activities of learning and caring for one's self. The student is presently not using drugs or alcohol and is in a rehabilitation program. If the student is not using drugs or alcohol, he/she could qualify for accommodations under Section 504/ADA. The condition is substantially limiting to the major life activity of learning.

Possible Accommodations:

- Provide texts and assignments to treatment facility.
- Arrange for periodic home-school contacts.
- Establish daily/weekly journal.
- Communicate with treatment facility.
- Provide/arrange for school counseling.
- Establish peer support group.
- Dismiss from school to attend treatment program.
- Inservice staff.

EMOTIONALLY DISTURBED

Example: A student who is emotionally disturbed may need an adjusted class schedule to allow time for regular counseling or therapy. The condition is substantially limiting to the major life activity of learning.

Possible Accommodations:

- Administer medication, if necessary.
- Approve early dismissal to attend therapy.
- Maintain weekly/daily journals; self-recording of behavior.

- Establish home-school communication system.
- Schedule periodic meetings with home and treatment specialists.
- Provide carry over of treatment plans into school environment.
- Assist with agency referrals.
- Develop behavior management programs.
- Write contracts for student behavior.
- Post rules for classroom behaviors; teach expectations.
- Provide school counseling, social skills instruction.
- Educate other students/staff/school personnel.
- Provide carryover treatment plans into home environment.
- Reinforce positive behavior.
- Schedule shorter study and work periods according to attention span expected.
- Be consistent.

EPILEPSY

EXAMPLE: The student is on medication for seizure activity, but experiences several grand mal seizures each month. The condition is substantially limiting to the major life activity of learning.

Possible Accommodations:

- Train staff and students and prepare a health care and emergency plan.
- Monitor and/or distribute medications, if necessary.

- Adjust seating to avoid injury.
- Provide rest time and academic considerations following seizure.
- Arrange buddy system.
- Provide an alternative recess.
- Provide education for peers.
- Inservice staff.

OBESITY

Examples: A student has an eating disorder that may require special accommodations. Obesity may be considered a disability under Section 504/ADA when it substantially impairs the major life activities of walking and breathing.

Possible Accommodations :

- Provide special seating modifications.
- Make dietary modifications.
- Adjust meals schedule.
- Adapt physical education program.
- Allow extra time to get to classes.
- Adapt rest rooms.
- Begin a peer support group.
- Allow more passing time.
- Ensure privacy for self-care.
- Provide school counseling.
- Provide for elevator privileges.

- Arrange classroom furniture to provide room to negotiate and move around classroom seating.
- Address busing concerns to ensure room on buses for seating.
- Arrange to provide opportunities for the individual to participate in intramural events.
- Make any class location changes that may be needed.

ORTHOPEDICALLY IMPAIRED

Example: The student has limited mobility and is confined to a wheelchair. The condition is substantially limiting to the major life activity of walking.

Possible Accommodations

- Develop a health care and emergency plan.
- Implement an adaptive physical education program.
- Provide physical therapy at school.
- Check facilities regarding physical accessibility.
- Provide extra time to get to class.
- Supply a set of textbooks for home.
- Provide a copy of classnotes from a peer.
- Practice emergency exit from school building.

PARENT WITH HEARING IMPAIRMENT

EXAMPLE: A parent is hearing impaired and requests access to school sponsored activities. The school makes accommodations by providing interpreter services for the parent to participate effectively in school sponsored events or meetings about the student.

Possible Accommodations:

- Provide an interpreter for all school events of expected participation.
- Make arrangements for home-school contacts/communication.
- Use written notes for communication.

PREGNANCY

EXAMPLE: A student in 12th grade delivered a baby in February. Physical complications of the birth prevented the student from returning to school for two weeks and resulted in several physical limitations after she returned to school. She has good grades and has kept up with graduation credit requirements. The condition is substantially limiting to the major life activity of learning.

Possible Accommodations

- Provide home instruction.
- Allow time to seek appropriate health services/time with school nurse.
- Modify academic schedule as needed.
- Modify curriculum as needed (physical education/extracurricular activities).
- Arrange for more comfortable seating.
- Arrange for make-up work and extend time lines for assignments.
- May need to adapt physical education.
- Provide access to school counseling/social work.

STUDENT FORMERLY RECEIVING SPECIAL EDUCATION SERVICES

EXAMPLE: The student has exited from a special education program, but still needs some academic accommodations to function in a general classroom.

Possible Accommodations:

- Maintain ongoing monitoring of progress.
- Establish daily/weekly progress reports.
- Allow for academic modifications.
- Provide after-school tutoring.
- Provide peer tutoring.
- Provide journal activities.
- Adjust homework assignments.
- Have student work toward more independent achievement of assignments.
- Contact previous special education teachers.
- Review files of progress reports and see what plans were successful.

STUDENT WITH SPECIAL HEALTH CARE NEEDS

EXAMPLE: The student has a special health care problem and requires clean intermittent catheterization twice each day. This procedure empties the bladder and helps prevent urinary tract infections and possible wetting. The school is required to provide trained personnel to perform the procedure, or to provide the student a private location to perform the procedure. The condition is substantially limiting to the major life activity of caring for one's self.

Possible Accommodations:

- Apply universal precautions.
- Provide trained personnel to perform special procedures.

- Provide student with private location and time to perform procedures.
- Involve school nurse, parents, teachers, and staff.
- Allow preferential seating.
- Modify recess, physical education, and transportation.
- Modify classroom environment.
- Reevaluate/update periodically.
- Develop a health care and emergency plan.
- If necessary, modify attendance policy.
- Establish health alert—every staff member involved with this student is aware of the health problem and of proper procedures.
- Provide a beeper/paging system for trained personnel.
- Arrange for trained personnel on school field trips.

TEMPORARILY DISABLED

EXAMPLE: A student was in an automobile accident and will be homebound and/or hospitalized for a period of time. The student is considered temporarily disabled under Section 504/ADA and should receive accommodations if this disability substantially limits a major life activity.

Possible Accommodations:

- Provide duplicate sets of texts.
- Provide assignments to hospital school.
- Tape lessons.
- Provide homebound instruction.
- Schedule periodic home-school meetings.
- Arrange for student to leave class early to get to next class.

- Provide access to elevators.
- Adapt physical education program.
- Arrange for a friend to assist student in getting from class to class (support network).
- Provide an interactive system—computer, e-mail.
- Organize school counseling—trauma from accident.
- Arrange for peer notes.
- Provide help with getting lunch tray.
- Change seating arrangements to accommodate needs.
- Modify assignments depending on disability.
- Allow more time for test completion.
- Allow shortened days; adjust attendance policy.
- Address special accommodations of a wheelchair.
- Inservice staff and class and prepare a health care and emergency plan.
- Test verbally.
- Provide peer assistance for social involvement (keep child informed of social activities).

TOURETTE'S SYNDROME

EXAMPLE: The student exhibits inappropriate gestures and sounds in the classroom and hallways. The condition is substantially limiting to the major life activity of learning.

Possible Accommodations:

- Pair with a fellow student for study.
- Educate other students about associated outbursts.

- Arrange for frequent parental interaction.
- Medication administration, if necessary.
- Provide supervision for transition activities.
- Provide alternative work space.
- Initiate time-out.
- Provide peer inservice.
- Provide appropriate space for the child to act out episode.

TRAUMATIC BRAIN INJURY

EXAMPLE: The student sustained a brain injury in an automobile accident. Many academic and motor skills have been lost from the injury. The condition is substantially limiting to the major life activities of learning, performing manual tasks, and/or caring for one's self.

Possible Accommodations:

- Provide extended school year/time.
- Furnish memory/organizational aids.
- Provide alternative testing.
- Initiate tutoring programs.
- Arrange for a health care and emergency plan.
- Inservice staff and peers.

TUBERCULOSIS

EXAMPLE: The student contracted tuberculosis two years ago and has been under treatment. The disease is no longer infectious, but the student is still weak. The condition is substantially limiting to the major life activity of caring for one's self.

Possible Accommodations:

- Adjust length of school day.
- Provide home tutor, as necessary.
- Inservice staff on problems that might arise with the student.
- Have the medical evaluator provide feedback to staff.
- Monitor the student's behavior and report changes to nurse immediately.
- Encourage student to stay in school as much as possible, as illness permits.
- Provide an alternative place for recess during cold weather.
- Have student evaluated periodically.
- Inservice students.

Contagious Infectious Diseases: If a child has a contagious disease that is a danger to students, he/she needs to be treated in another environment but still be provided FAPE.

QUESTIONS AND ANSWERS

1. **Q. When do the second and third prongs of the Section 504/ADA definition become relevant?**

   Second Prong — Has a record of an impairment.

   Third Prong — Is regarded as having an impairment.

   A. Section 504/ADA teams should only use the first prong of the Section 504/ADA eligibility definition: A student may be considered disabled if the individual has a mental or physical impairment which substantially limits one or more of such person's major life activities. The second and third prongs were meant for situations where individuals are discriminated against based upon a record of an impairment or being perceived and treated in a discriminatory manner. Prongs two and three should not be used for eligibility purposes.

   It is the negative action taken based on the perception of the record that entitles a person to protection against discrimination.

2. **Q. Are slow learners eligible for Section 504/ADA accommodations or services?**

   A. "Slow learning" is not a disability any more than giftedness would be considered an impairment. If a slow learner cannot cope with the general education, the problem is with the curriculum or instructional approach, not the student. The curriculum or instruction must be modified to meet the ability and pace of the student. It should be noted that the student could have a disability (for example, an attention deficit disorder) and also be a slow learner. The ADD could entitle the student to Section 504/ADA services.

3. **Q. Who should serve on the Section 504 committee?**

   A. A practice that has worked for many schools is the utilization of the intervention team or prereferral team as the Section 504 committee. This team is usually knowledgeable about the student and is familiar with interventions that have been successful and strategies that have failed. The case team will usually include:

   A. Parent(s)

   B. Student, when appropriate

   C. Principal or designee

   D. Classroom teacher(s)

   E. School counselor

   F. Others as appropriate

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4. **Q. Can a school use the special education IEP form to document Section 504 accommodations and services?**

   A. If a student is eligible to receive accommodations under Section 504, they should be documented on a Section 504 accommodation plan.

5. **Q. Should each eligible Section 504/ADA student have a case manager?**

   A. Yes. After determining eligibility, the Section 504 committee should appoint a case manager to ensure the services are implemented and to manage the Section 504 file. If the student transitions to a new level or building, a new case manager will need to be assigned.

   The case manager is usually the primary service provider. Typical case managers include school counselors, regular education teachers, and school nurses.

6. **Q. How does free appropriate public education differ between Section 504/ADA and special education?**

   A. In special education, a student must be eligible under one of the disability categories and requires special education before he/she is entitled to related services.

   The definition for eligibility under Section 504 is very broad and could include any physical or mental impairment that substantially limits a major life activity. The impairment must be shown to impact the student's education program. The student could receive accommodations, **and/or** related services. Some students could receive just a related service, such as physical therapy or school counseling.

7. **Q. Who conducts school evaluations to determine Section 504/ADA eligibility?**

   A. Many students who are eligible for Section 504/ADA services have medical conditions that have already been diagnosed. In these cases the school would request permission from the parents to obtain copies to document the Section 504 eligibility.

   In many cases, the student is referred for an evaluation under special education, but is found not to be eligible. That evaluation can be used for Section 504 consideration.

   In cases where the school conducts the evaluation, special education staff or other support staff may be involved. Most schools pay a portion of the salary and benefits of special education staff and could justify the use of these individuals to conduct 504/ADA evaluations.

8. **Q. When a student exits special education should they be considered for Section 504/ADA eligibility?**

A. Yes. Section 504 eligibility shall be a team decision and will depend on the unique needs of the student. Many exiting special education students will not require Section 504/ADA accommodations or services. If the team decides to consider Section 504/ADA eligibility, a referral would be made to the Section 504 team for determination.

Special education students who are graduating from high school and moving on to post secondary opportunities should be considered for Section 504 services. Post secondary programs receiving federal funds are under the same obligations as schools.

9. **Q. Where can parents or the school receive technical assistance regarding Section 504 issues?**

A. There are several sources of technical assistance for parents and school, including the following:
1. School Section 504/ADA coordinator.
2. Utah State Office of Education—Equity Office.
3. Regional Office for Civil Rights, Denver, Colorado.

10. **Q. To what extent should parents be involved in the Section 504/ADA process?**

A. The Section 504 regulations do not specify the degree of parent participation. It is always **best practice** to involve parents every step along the way in their child's educational program. It is recommended that parents receive notice whenever their child is singled out for evaluation, eligibility or service delivery. Written consent should be obtained before evaluations and services. The parents should be invited to participate in all Section 504/ADA meetings regarding their child.

11. **Q. Can the Section 504 team recommend alternatives to an eligible student's graduation requirements?**

A. Yes. For example, a student with a severe physical disability might not be capable to participate and fulfill physical education graduation requirements. Adapted physical education would be a modification for the physical education requirement. Schools are encouraged to develop alternative options rather than totally waive a course requirement.

12. **Q. Are all students with attention deficient disorder eligible for Section 504/ADA services?**

A. Although many students who have been diagnosed with ADD/ADHD **do** qualify for Section 504/ADA services, many others do not. Many students who have been diagnosed with ADD/ADHD are either on medication or have been taught and apply compensatory skills to successfully function in a school environment and may not require Section 504/ADA services.

Some students with ADD/ADHD will be eligible for special education services if they were first found to be eligible for special education under the categories of learning disability, other health impaired, emotionally disturbed, or traumatic brain injury.

If the student has a mental or physical disability that substantially limits a major life activity (learning in the case of ADD/ADHD), then the student would qualify for Section 504/ADA accommodations and/or services.

13. Q. **What are the consequences for a school that refuses to meet Section 504/ADA obligations?**

A. Mediation should be used whenever possible to assist in resolving disputes between parents in the school.The parents could file a local grievance with the school, request a due process hearing, take the school to court, or file a complaint with the Office for Civil Rights. OCR is part of the U. S. Department of Education.

14. Q. **Should a school document and keep a Section 504/ADA file on each eligible student?**

A. It is **best practice** to document the events of each Section 504/ADA service. Files should be kept on eligible students and maintained by the case manager. These files should be separate from the cumulative files, to avoid possible discrimination based on the record. Section 504/ADA files would be under all requirements listed in the Family Educational Rights and Privacy Act (FERPA).

15. Q. **Who pays the costs for Section 504/ADA services?**

A. Services are the responsibility of the school. Federal and state special education funds should not be used for Section 504 services. If accommodations are listed on a student's IEP, they must be paid for through special education funds.

16. Q. **Are private schools responsible to provide Section 504 requirements?**

A. Yes, if the private school (including preschool) is receiving any form of federal funding.

17. Q. **Can a school require a medical statement for students for whom they cannot pinpoint a medical or physical impairment that is substantially limiting a major life activity within the school and for which assistance is needed in the school?**

A. A school cannot require a parent or student to provide a medical statement *if* the school suspects that the student has a disability that would necessitate the provision of regular or special education and related aids and services under the regulations implementing Section 504 of the Rehabilitation Act of 1973.

However, a school is not required to evaluate a student who the school does not believe has a disability *e.g.*, a mental or physical impairment that substantially limits a major life activity, such as learning. A school is required to conduct an evaluation of any person who, because of disability needs, or whom the school believes to need regular or special education and related aids and services before placing the person in regular special education with related aids and services. If a school determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to make an appropriate evaluation consistent with 34 CFR §104.35(a) and (b), the school must ensure that the student receives this assessment at no cost to the parents. If alternative assessment methods meet the evaluation criteria, these methods may be used in lieu of a medical assessment. If a district does not believe that a student has a disability and refuses to evaluate the child, the district must inform the parents of their due process rights under 34 CFR §104.36.

18. **Q. Are schools required to provide the food when dietary modifications are needed? Or do parents provide the food and the school prepare it (as is the case with medication)?**

A. It depends. A school, in providing any aid, benefit, or service, may not deny or afford a person with a disability an opportunity to participate in, or benefit from, an aid, benefit, or service, such as the provision of food services, that is not equal to, or as effective as, that provided to persons without disability. The school is also required to provide free appropriate public education to each qualified person with a disability. Unlike medicine, which the school is not required to provide for any student, if the school provides food to students generally, it would also have to provide an appropriate lunch to the student with disabilities who has special dietary needs on the same basis that food is provided to students without disabilities. Depending on the circumstances, the school may have to provide special foods to meet the individual needs of the student with disabilities. This responsibility is determined on a case-by-case basis.

19. **Q. Do school responsibilities under Section 504 also include providing services to students in private schools?**

A. If a school has made available a free appropriate public education to a person with a disability and the person's parent or guardian chooses to place the person in a private school, Section 504 does not require the recipient to receive services in the private school unless that private school receives any federal funding. 34 CFR § 104.33(c)(4).

20. **Q. For students who are referred to special education, but do not qualify under IDEA criteria, do they automatically become Section 504 students?**

A. Under Section 504, a "person with disabilities" is defined as any person who has a physical or mental impairment that substantially limits a major life activity. Thus, depending on the severity of their condition, students who do not meet the standards under the Individuals with Disabilities Education Act (IDEA) may or may not fit within the Section 504 definition. (See Eligibility, Page 4).

21. Q. **Can a student be identified as IDEA eligible and be receiving some services under IDEA and also be identified as a Section 504 student and be receiving different assistance in the regular classroom under Section 504?**

A. In order to be eligible for services under the IDEA, a student must be found to have one or more of the disability categories specified *and* must also be found to need special education. A student identified as IDEA eligible and receiving services under the IDEA in order to receive a free appropriate public education could receive the same assistance in order to comply with Section 504. Section 104.33(b)(2) states that implementation of an individualized education program developed in accordance with IDEA is one means of meeting Section 504's requirement for the provision of regular and special education and related aids and services designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met.

22. Q. **If a student is identified as in need of accommodations under Section 504, and the parent decides to home-school the child, is the school still responsible for providing services in the home for the student because they are in the jurisdictional area of the school's responsibility?**

A. No. Where a school has offered an appropriate education, a school is not responsible, under Section 504, for the provision of educational services to students not enrolled in the public educational program based on the personal choice of the parent or guardian.

23. Q. **If a Section 504 student is, due to his/her disability, constantly disruptive on the school bus, can the school have the student's bus privileges removed if she/he needs the transportation to get to school? If so, must the school still provide transportation? How about when the student is a threat to the safety of other students on the bus?**

A. If transportation is a related service for a student with disabilities, any incident of misconduct on the bus should be viewed in the same manner as any disciplinary incident in the school. A school cannot revoke transportation services just as a school could not suspend a student with disabilities in excess of 10 days or, in some cases, impose cumulative suspensions exceeding 10 days without taking a number of prior actions. A school can change the mode or method of providing transportation services if a student with disabilities is endangering himself or others, just as the school can place a student with disabilities in a more restrictive setting if the student becomes dangerous.

APPENDICES

APPENDIX A

Section 504 of The Rehabilitation Act of 1973 —The Law and Regulations

NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

34 C.F.R.Part 104

[Amended as of December 13, 2000]

SUBPART A—GENERAL PROVISIONS

Sec. 104.1 Purpose

The purpose of this part is to effectuate Sec. 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Sec. 104.2 Application

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

Sec. 104.3 Definitions

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Sec. 504" means Sec. 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) "Department" means the Department of Education.

(e) "Assistant Secretary" means the Assistant Secretary for Civil Rights of the Department of Education.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) "Handicapped persons" means any person who (i) has a physical or

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mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicappped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under Sec. 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

Sec. 104.4 Discrimination prohibited

(a) General

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) Discriminatory actions prohibited

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Programs limited by Federal law

The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

Sec. 104.5 Assurances required

(a) Assurances

An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) Duration of obligation

(1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will

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obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) Covenants

(1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

Sec. 104.6 Remedial action, voluntary action, and self-evaluation

(a) Remedial action

(1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of Sec. 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of Sec. 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of Sec. 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) Voluntary action

A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) Self-evaluation

(1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination

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that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) A list of the interested persons consulted (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

Sec. 104.7 Designation of responsible employee and adoption of grievance procedures

(a) Designation of responsible employee

A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures

A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

Sec. 104.8 Notice

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of Sec. 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

Sec. 104.9 Administrative requirements for small recipients

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

Sec. 104.10 Effect of state or local law or other requirements and effect of employment opportunities

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

SUBPART B—EMPLOYMENT PRACTICES

Sec. 104.11 Discrimination prohibited

(a) General

(1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) Specific activities

The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

Sec. 104.12 Reasonable accommodation

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's

workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

Sec. 104.13 Employment criteria

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Sec. 104.14 Preemployment inquiries

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job- related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 104.6(b), or when a recipient is taking affirmative action pursuant to Sec. 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, Provided, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

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SUBPART C—PROGRAM ACCESSIBILITY

Sec. 104.21 Discrimination prohibited

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

Sec. 104.22 Existing facilities

(a) Program accessibility

A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Methods

A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers

If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period

A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan

In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicappped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) Notice

The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

Sec. 104.23 New construction

(a) Design and construction

Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) Alteration

Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons

(c) Conformance with Uniform Federal Accessibility Standards

(1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with Secs. 3-8 of the Uniform Accessibility Standards (UFAS) (Appendix A to 41 CFR Subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, Sec. 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980]

SUBPART D—PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Sec. 104.31 Application of this subpart

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Sec. 104.32 Location and notification

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

Sec. 104.33 Free appropriate public education

(a) General

A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction,

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regardless of the nature or severity of the person's handicap.

(b) Appropriate education

(1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education

(1) General

For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation

If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) Residential placement

If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents

If a recipient has made available, in conformance with the requirements of this section and 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of 104.36.

(d) Compliance

A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

Sec. 104.34 Educational setting

(a) Academic setting

A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities

If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Sec. 104.35 Evaluation and placement

(a) Preplacement evaluation

A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) Evaluation procedures

A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

(d) Reevaluation

A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of

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meeting this requirement.

Sec. 104.36 Procedural safeguards

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of Sec. 615 of the Education of the Handicapped Act is one means of meeting this requirement.

Sec. 104.37 Nonacademic services

(a) General

(1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services

A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) Physical education and athletics

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

Sec. 104.38 Preschool and adult education programs

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

Sec. 104.39 Private education programs

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate

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education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of 104.34, 104.37, and 104.38.

SUBPART E—POSTSECONDARY EDUCATION

Sec. 104.41 Application of this subpart

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Sec. 104.42 Admissions and recruitment

(a) General

Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) Admissions

In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception

When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and

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that it will be used only in accordance with this part.

(d) Validity studies

For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

Sec. 104.43 Treatment of students; general

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

Sec. 104.44 Academic adjustments

(a) Academic requirements

A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) Other rules

A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations

In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) Auxiliary aids

(1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other

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similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Sec. 104.45 Housing

(a) Housing provided by the recipient

A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) Other housing

A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

Sec. 104.46 Financial and employment assistance to students

(a) Provision of financial assistance

(1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) Assistance in making available outside employment

A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) Employment of students by recipients

A recipient that employs any of its students may not do so in a manner that violates Subpart B.

Sec. 104.47 Nonacademic services

(a) Physical education and athletics

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) Counseling and placement services

A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Social organizations

A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

SUBPART F—HEALTH, WELFARE, AND SOCIAL SERVICES

Sec. 104.51 Application of this subpart

Subpart F applies to health, welfare, and other social service programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Sec. 104.52 Health, welfare, and other social services

(a) General

In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in 104.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) Notice

A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing impaired

A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) Auxiliary aids

(1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

Sec. 104.53 Drug and alcohol addicts

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a

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medical condition, because of the person's drug or alcohol abuse or alcoholism.

Sec. 104.54 Education of institutionalized persons

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.

SUBPART G—PROCEDURES

Sec. 104.61 Procedures

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 100.6-100.10 and Part 101 of this title.

APPENDIX A TO PART 104—ANALYSIS OF FINAL REGULATION

Subpart A—General Provisions

Definitions:

1. "Recipient"

Sec. 104.23 contains definitions used throughout the regulation.

One comment requested that the regulation specify that nonpublic elementary and secondary schools that are not otherwise recipients do not become recipients by virtue of the fact their students participate in certain federally funded programs. The Secretary believes it unnecessary to amend the regulation in this regard, because almost identical language in the Department's regulations implementing title VI and title IX of the Education Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are indirectly subject to the substantive requirements of this regulation through the application of 104.4(b)(iv), which prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services to beneficiaries of the recipients' programs.

2. "Federal financial assistance"

In 104.3(h), defining federal financial assistance, a clarifying change has been made: procurement contracts are specifically excluded. They are covered, however, by the Department of Labor's regulation under Sec. 503. The Department has never considered such contracts to be contracts of assistance; the explicit exemption has been added only to avoid possible confusion.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. A number of comments argued for its deletion on the ground that Sec. 504, unlike title VI and title IX, contains no statutory exemption for such contracts. There is no indication, however, in the legislative history of the Rehabilitation Act of 1973 or of the amendments to that Act in 1974, that Congress intended Sec. 504 to have a broader application, in terms of federal financial assistance, than other civil rights statutes. Indeed, Congress directed that Sec. 504 be implemented in the same manner as titles VI and IX. In view of the long established exemption of contracts of insurance or guaranty under title VI, we think it unlikely that Congress intended Sec. 504 to apply to such contracts.

3. "Handicapped person"

Sec. 104.3(j), which defines the class of persons protected under the regulation, has not been substantially changed. The definition of handicapped person in paragraph (j)(1) conforms to the statutory definition of handicapped person that is applicable to Sec. 504, as set forth in Sec. 111(a) of the Rehabilitation Act Amendments of 1974, Pub. L. 93-516.

The first of the three parts of the statutory and regulatory definition includes any person who has a physical or mental impairment that substantially limits one or more major life activities. Paragraph (j)(2)(i)

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further defines physical or mental impairments. The definition does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any such list. The term includes, however, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and, as discussed below, drug addiction and alcoholism.

It should be emphasized that a physical or mental impairment does not constitute a handicap for purposes of Sec. 504 unless its severity is such that it results in a substantial limitation of one or more major life activities. Several comments observed the lack of any definition in the proposed regulation of the phrase "substantially limits." The Department does not believe that a definition of this term is possible at this time.

A related issue raised by several comments is whether the definition of handicapped person is unreasonably broad. Comments suggested narrowing the definition in various ways. The most common recommendation was that only "traditional" handicaps be covered. The Department continues to believe, however, that it has no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps. The Department intends, however, to give particular attention in its enforcement of Sec. 504 to eliminating discrimination against persons with the severe handicaps that were the focus of concern in the Rehabilitation Act of 1973.

The definition of handicapped person also includes specific limitations on what persons are classified as handicapped under the regulation. The first of the three parts of the definition specifies that only physical and mental handicaps are included. Thus, environmental, cultural, and economic disadvantage are not in themselves covered; nor are prison records, age, or homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped person.

In paragraph (j)(2)(i), physical or mental impairment is defined to include, among other impairments, specific learning disabilities. The Department will interpret the term as it is used in Sec. 602 of the Education of the Handicapped Act, as amended. Paragraph (15) of Sec. 602 uses the term "specific learning disabilities" to describe such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Paragraph (j)(2)(i) has been shortened, but not substantively changed, by the deletion of clause (C), which made explicit the inclusion of any condition which is mental or physical but whose precise nature is not at present known. Clauses (A) and (B) clearly comprehend such conditions.

The second part of the statutory and regulatory definition of handicapped person includes any person who has a record of a physical or mental impairment that substantially limits a major life activity. Under the definition of "record" in paragraph (j)(2)(iii), persons who have a history of a handicapping condition but no longer have the condition, as well as persons who have been incorrectly classified as having such a condition, are protected from discrimination under Sec. 504. Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group, persons who have been misclassified as mentally retarded.

The third part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. It includes many persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped.

4. Drug addicts and alcoholics

As was the case during the first comment period, the issue of whether to include drug addicts and alcoholics within the definition of handicapped person was of major concern to many commenters. The

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arguments presented on each side of the issue were similar during the two comment periods, as was the preference of commenters for exclusion of this group of persons. While some comments reflected misconceptions about the implications of including alcoholics and drug addicts within the scope of the regulation, the Secretary understands the concerns that underlie the comments on this question and recognizes that application of Sec. 504 to active alcoholics and drug addicts presents sensitive and difficult questions that must be taken into account in interpretation and enforcement.

The Secretary has carefully examined the issue and has obtained a legal opinion from the Attorney General. That opinion concludes that drug addiction and alcoholism are "physical or mental impairments" within the meaning of Sec. 7(6) of the Rehabilitation Act of 1973, as amended, and that drug addicts and alcoholics are therefore handicapped for purposes of Sec. 504 if their impairment substantially limits one of their major life activities. The Secretary therefore believes that he is without authority to exclude these conditions from the definition. There is a medical and legal consensus that alcoholism and drug addiction are diseases, although there is disagreement as to whether they are primarily mental or physical. In addition, while Congress did not focus specifically on the problems of drug addiction and alcoholism in enacting Sec. 504, the committees that considered the Rehabilitation Act of 1973 were made aware of the Department's long-standing practice of treating addicts and alcoholics as handicapped individuals eligible for rehabilitation services under the Vocational Rehabilitation Act.

The Secretary wishes to reassure recipients that inclusion of addicts and alcoholics within the scope of the regulation will not lead to the consequences feared by many commenters. It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified.

With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider for all applicants including drug addicts and alcoholics past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the work-place, provided that such rules are enforced against all employees.

With respect to other services, the implications of coverage, of alcoholics and drug addicts are two-fold: first, no person may be excluded from services solely by reason of the presence or history of these conditions; second, to the extent that the manifestations of the condition prevent the person from meeting the basic eligibility requirements of the program or cause substantial interference with the operation of the program, the condition may be taken into consideration. Thus, a college may not exclude an addict or alcoholic as a student, on the basis of addiction or alcoholism, if the person can successfully participate in the education program and complies with the rules of the college and if his or her behavior does not impede the performance of other students.

Of great concern to many commenters was the question of what effect the inclusion of drug addicts and alcoholics as handicapped persons would have on school disciplinary rules prohibiting the use or possession of drugs or alcohol by students. Neither such rules nor their application to drug addicts or alcoholics is prohibited by this regulation, provided that the rules are enforced evenly with respect to all students.

5. "Qualified handicapped person"

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Paragraph (k) of 104.3 defines the term "qualified handicapped person." Throughout the regulation, this term is used instead of the statutory term "otherwise qualified handicapped person." The Department believes that the omission of the word "otherwise" is necessary in order to comport with the intent of the statute because, read literally, "otherwise" qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be "otherwise qualified" for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms "qualified" and "otherwise qualified" are intended to be interchangeable.

Sec. 104.3(k)(1) defines a qualified handicapped person with respect to employment as a handicapped person who can, with reasonable accommodation, perform the essential functions of the job in question. The term "essential functions" does not appear in the corresponding provision of the Department of Labor's Sec. 503 regulation, and a few commenters objected to its inclusion on the ground that a handicapped person should be able to perform all job tasks. However, the Department believes that inclusion of the phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job. Further, we are convinced that inclusion of the phrase is not inconsistent with the Department of Labor's application of its definition.

Certain commenters urged that the definition of qualified handicapped person be amended so as explicitly to place upon the employer the burden of showing that a particular mental or physical characteristic is essential. Because the same result is achieved by the requirement contained in paragraph (a) of 104.13, which requires an employer to establish that any selection criterion that tends to screen out handicapped persons is job-related, that recommendation has not been followed.

Sec. 104.3(k)(2) defines qualified handicapped person, with respect to preschool, elementary, and secondary programs, in terms of age. Several commenters recommended that eligibility for the services be based upon the standard of substantial benefit, rather than age, because of the need of many handicapped children for early or extended services if they are to have an equal opportunity to benefit from education programs. No change has been made in this provision, again because of the extreme difficulties in administration that would result from the choice of the former standard. Under the remedial action provisions of 104.6(a)(3), however, persons beyond the age limits prescribed in 104.3(k)(2) may in appropriate cases be required to be provided services that they were formerly denied because of a recipient's violation of Sec. 504.

Sec. 104.3(k)(2) states that a handicapped person is qualified for preschool, elementary, or secondary services if the person is of an age at which nonhandicapped persons are eligible for such services or at which State law mandates the provision of educational services to handicapped persons. In addition, the extended age ranges for which recipients must provide full educational opportunity to all handicapped persons in order to be eligible for assistance under the Education of the Handicapped Act generally, 3-18 as of September 1978, and 3-21 as of September 1980 are incorporated by reference in this paragraph.

Sec. 104.3(k)(3) defines qualified handicapped person with respect to postsecondary educational programs. As revised, the paragraph means that both academic and technical standards must be met by applicants to these programs. The term "technical standards" refers to all nonacademic admissions criteria that are essential to participation in the program in question.

6. General prohibitions against discrimination

Sec. 104.4 contains general prohibitions against discrimination applicable to all recipients of assistance from this Department.

Paragraph (b)(1)(i) prohibits the exclusion of qualified handicapped persons from aids, benefits, or services, and paragraph (ii) requires that equal opportunity to participate or benefit be provided. Paragraph (iii) requires that services provided to handicapped persons be as effective as those provided to the nonhandicapped. In paragraph (iv), different or separate services are prohibited except when necessary to provide equally effective benefits.

In this context, the term "equally effective," defined in paragraph (b)(2), is intended to encompass the

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concept of equivalent, as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary. This standard parallels the one established under title VI of Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See Lau v. Nichols, 414 U.S. 563 (1974). To be equally effective, however, an aid, benefit, or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results.

It must be emphasized that, although separate services must be required in some instances, the provision of unnecessarily separate or different services is discriminatory. The addition to paragraph (b)(2) of the phrase "in the most integrated setting appropriated to the person's needs" is intended to reinforce this general concept. A new paragraph (b)(3) has also been added to 104.4, requiring recipients to give qualified handicapped persons the option of participating in regular programs despite the existence of permissibly separate or different programs. The requirement has been reiterated in 104.38 and 104.47 in connection with physical education and athletics programs.

Sec. 104.4(b)(1)(v) prohibits a recipient from supporting another entity or person that subjects participants or employees in the recipient's program to discrimination on the basis of handicap. This section would, for example, prohibit financial support by a recipient to a community recreational group or to a professional or social organization that discriminates against handicapped persons. Among the criteria to be considered in each case are the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. Paragraph (b)(1)(vi) was added in response to comment in order to make explicit the prohibition against denying qualified handicapped persons the opportunity to serve on planning and advisory boards responsible for guiding federally assisted programs or activities.

Several comments appeared to interpret 104.4(b)(5), which proscribes discriminatory site selection, to prohibit a recipient that is located on hilly terrain from erecting any new buildings at its present site. That, of course, is not the case. This paragraph is not intended to apply to construction of additional buildings at an existing site. Of course, any such facilities must be made accessible in accordance with the requirements of 104.23.

7. Assurances of compliance

Sec. 104.5(a) requires a recipient to submit to the Assistant Secretary an assurance that each of its programs and activities receiving or benefiting from Federal financial assistance from this Department will be conducted in compliance with this regulation. Many commenters also sought relief from the paperwork requirements imposed by the Department's enforcement of its various civil rights responsibilities by requesting the Department to issue one form incorporating title VI, title IX, and Sec. 504 assurances. The Secretary is sympathetic to this request. While it is not feasible to adopt a single civil rights assurance form at this time, the Office for Civil Rights will work toward that goal.

8. Private rights of action

Several comments urged that the regulation incorporate provision granting beneficiaries a private right of action against recipients under Sec. 504. To confer such a right is beyond the authority of the executive branch of Government. There is, however, case law holding that such a right exists. Lloyd v. Regional Transportation Authority, 548 F. 2d 1277 (7th Cir. 1977); see Hairston v. Drosick, Civil No. 75-0691 (S.D. W. Va., Jan. 14, 1976); Gurmankin v. Castanzo, 411 F. Supp. 982 (E.D. Pa. 1976); cf. Lau v. Nichols, supra.

9. Remedial action

Where there has been a finding of discrimination, 104.6 requires a recipient to take remedial action to overcome the effects of the discrimination. Actions that might be required under paragraph (a)(1) include provision of services to persons previously discriminated against, reinstatement of employees and development of a remedial action plan. Should a recipient fail to take required remedial action, the ultimate sanctions of court action or termination of Federal financial assistance may be imposed.

Paragraph (a)(2) extends the responsibility for taking remedial action to a recipient that exercises control over a noncomplying recipient. Paragraph (a)(3) also makes clear that handicapped persons who are not in the program at the time that remedial action is required to be taken may also be the subject of such remedial action. This paragraph has been revised in response to comments in order to include persons who would have been in the program if discriminatory practices had not existed. Paragraphs (a) (1), (2), and (3) have also been amended in response to comments to make plain that, in appropriate cases, remedial action might be required to redress clear violations of the statute itself that occurred before the effective date of this regulation.

10. Voluntary action

In 104.6(b), the term "voluntary action" has been substituted for the term "affirmative action" because the use of the latter term led to some confusion. We believe the term "voluntary action" more accurately reflects the purpose of the paragraph. This provision allows action, beyond that required by the regulation, to overcome conditions that led to limited participation by handicapped persons, whether or not the limited participation was caused by any discriminatory actions on the part of the recipient. Several commenters urged that paragraphs (a) and (b) be revised to require remedial action to overcome effects of prior discriminatory practices regardless of whether there has been an express finding of discrimination. The self-evaluation requirement in paragraph (c) accomplishes much the same purpose.

11. Self-evaluation

Paragraph (c) requires recipients to conduct a self-evaluation in order to determine whether their policies or practices may discriminate against handicapped persons and to take steps to modify any discriminatory policies and practices and their effects. The Department received many comments approving of the addition to paragraph (c) of a requirement that recipients seek the assistance of handicapped persons in the self-evaluation process. This paragraph has been further amended to require consultation with handicapped persons or organizations representing them before recipients undertake the policy modifications and remedial steps prescribed in paragraphs (c) (ii) and (iii).

Paragraph (c)(2), which sets forth the recordkeeping requirements concerning self-evaluation, now applies only to recipients with fifteen or more employees. This change was made as part of an effort to reduce unnecessary or counterproductive administrative obligations on small recipients. For those recipients required to keep records, the requirements have been made more specific; records must include a list of persons consulted and a description of areas examined, problems identified, and corrective steps taken. Moreover, the records must be made available for public inspection.

12. Grievance procedure

Sec. 104.7 requires recipients with fifteen or more employees to designate an individual responsible for coordinating its compliance efforts and to adopt a grievance procedure. Two changes were made in the section in response to comment. A general requirement that appropriate due process procedures be followed has been added. It was decided that the details of such procedures could not at this time be specified because of the varied nature of the persons and entities who must establish the procedures and of the programs to which they apply. A sentence was also added to make clear that grievance procedures are not required to be made available to unsuccessful applicants for employment or to applicants for admission to colleges and universities.

The regulation does not require that grievance procedures be exhausted before recourse is sought from the Department. However, the Secretary believes that it is desirable and efficient in many cases for complainants to seek resolution of their complaints and disputes at the local level and therefore encourages them to use available grievance procedures.

A number of comments asked whether compliance with this section or the notice requirements of 104.8 could be coordinated with comparable action required by the title IX regulation. The Department encourages such efforts.

13. Notice

Sec. 104.8 (formerly 84.9) sets forth requirements for dissemination of statements of nondicrimination policy by recipients.

It is important that both handicapped persons and the public at large be aware of the obligations of recipients under Sec. 504. Both the Department and recipients have responsibilities in this regard. Indeed the Department intends to undertake a major public information effort to inform persons of their rights under Sec. 504 and this regulation. In 104.8 the Department has sought to impose a clear obligation on major recipients to notify beneficiaries and employees of the requirements of Sec. 504, without dictating the precise way in which this notice must be given. At the same time, we have avoided imposing requirements on small recipients (those with fewer than fifteen employees) that would create unnecessary and counterproductive paper work burdens on them and unduly stretch the enforcement resources of the Department.

Sec. 104.8(a), as simplified, requires recipients with fifteen or more employees to take appropriate steps to notify beneficiaries and employees of the recipient's obligations under Sec. 504. The last sentence of 104.8(a) has been revised to list possible, rather than required, means of notification. Sec. 104.8(b) requires recipients to include a notification of their policy of nondiscrimination in recruitment and other general information materials.

In response to a number of comments, 104.8 has been revised to delete the requirements of publication in local newspapers, which has proved to be both troublesome and ineffective. Several commenters suggested that notification on separate forms be allowed until present stocks of publications and forms are depleted. The final regulation explicitly allows this method of compliance. The separate form should, however, be included with each significant publication or form that is distributed.

Sec. 104 which prohibited the use of materials that might give the impression that a recipient excludes qualified handicapped persons from its program, has been deleted. The Department is convinced by the comments that this provision is unnecessary and difficult to apply. The Department encourages recipients, however, to include in their recruitment and other general information materials photographs of handicapped persons and ramps and other features of accessible buildings.

Under new 104.9 the Assistant Secretary may, under certain circumstances, require recipients with fewer than fifteen employees to comply with one or more of these requirements. Thus, if experience shows a need for imposing notice or other requirements on particular recipients or classes of small recipients, the Department is prepared to expand the coverage of these sections.

14. Inconsistent State laws

Sec. 104.10(a) states that compliance with the regulation is not excused by State or local laws limiting the eligibility of qualified handicapped persons to receive services or to practice an occupation. The provision thus applies only with respect to state or local laws that unjustifiably differentiate on the basis of handicap.

Paragraph (b) further points out that the presence of limited employment opportunities in a particular profession, does not excuse a recipient from complying with the regulation. Thus, a law school could not deny admission to a blind applicant because blind laywers may find it more difficult to find jobs than do nonhandicapped lawyers.

Subpart B—Employment Practices

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance administered by the Department. This subpart is consistent with the employment provisions of the Department's regulation implementing title IX of the Education Amendments of 1972 (34 CFR, Part 106) and the regulation of the Department of Labor under Sec. 503 of the Rehabilitation Act, which requires certain Federal contractors to take affirmative action in the employment and advancement of qualified handicapped persons. All recipients subject to title IX are also subject to this regulation. In addition, many recipients subject to this regulation receive Federal procurement contracts in excess of $2,500 and are therefore also subject to Sec. 503.

15. Discriminatory practices

Sec. 104.11 sets forth general provisions with respect to discrimination in employment. A new paragraph (a)(2) has been added to clarify the employment obligations of recipients that receive Federal

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funds under Part B of the Education of the Handicapped Act, as amended (EHA). Sec. 606 of the EHA obligates elementary or secondary school systems that receive EHA funds to take positive steps to employ and advance in employment qualified handicapped persons. This obligation is similar to the nondiscrimination requirement of Sec. 504 but requires recipients to take additional steps to hire and promote handicapped persons. In enacting Sec. 606 Congress chose the words "positive steps" instead of "affirmative action" advisedly and did not intend Sec. 606 to incorporate the types of activities required under Executive Order 11246 (affirmative action on the basis of race, color, sex, or national origin) or under Secs. 501 and 503 of the Rehabilitation Act of 1973.

Paragraph (b) of 104.11 sets forth the specific aspects of employment covered by the regulation. Paragraph (c) provides that inconsistent provisions of collective bargaining agreements do not excuse noncompliance.

16. Reasonable accommodation

The reasonable accommodation requirement of 104.12 generated a substantial number of comments. The Department remains convinced that its approach is both fair and effective. Moreover, the Department of Labor reports that it has experienced little difficulty in administering the requirements of reasonable accommodation. The provision therefore remains basically unchanged from the proposed regulation.

Sec. 104.12 requires a recipient to make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination.

Sec. 104.12(b) lists some of the actions that constitute reasonable accommodation. The list is neither all- inclusive nor meant to suggest that employers must follow all of the actions listed.

Reasonable accommodation includes modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include physical modifications or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons. If such accommodations would cause undue hardship to the employer, they need not be made.

Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. The reasonable accommodation standard in 104.12 is similar to the obligation imposed upon Federal contractors in the regulation implementing Sec. 503 of the Rehabilitation Act of 1973, administered by the Department of Labor. Although the wording of the reasonable accommodation provisions of the two regulations is not identical, the obligation that the two regulations impose is the same, and the Federal Government's policy in implementing the two sections will be uniform. The Department adopted the factors listed in paragraph (c) instead of the "business necessity" standard of the Labor regulation because that term seemed inappropriate to the nature of the programs operated by the majority of institutions subject to this regulation, e.g., public school systems, colleges and universities. The factors listed in paragraph (c) are intended to make the rationale underlying the business necessity standard applicable to an understandable by recipients of ED funds.

17. Tests and selection criteria

Revised 104.13(a) prohibits employers from using test or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job-related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by

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the Assistant Secretary to be available. This paragraph is an application of the principle established under title VII of the Civil Rights Act of 1964 in Griggs v. Duke Power Company, 401 U.S. 424 (1971).

Under the proposed section, a statistical showing of adverse impact on handicapped persons was required to trigger an employer's obligation to show that employment criteria and qualifications relating to handicap were necessary. This requirement was changed because the small number of handicapped persons taking tests would make statistical showings of "disproportionate, adverse effect" difficult and burdensome. Under the altered, more workable provision, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. A recipient is no longer limited to using predictive validity studies as the method for demonstrating that a test or other selection criterion is in fact job-related. Nor, in all cases, are predictive validity studies sufficient to demonstrate that a test or criterion is job-related. In addition, 104.13(a) has been revised to place the burden on the Assistant Secretary, rather than the recipient, to identify alternate tests.

Sec. 104.13(b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be necessary to the job in question but that may make the handicapped person unable to pass the test. The recipient must select and administer tests so as best to ensure that the test will measure the handicapped person's ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except, of course, where such skills are the factors that the test purports to measure. For example, a person with a speech impediment may be perfectly qualified for jobs that do not or need not, with reasonable accommodation, require ability to speak clearly. Yet, if given an oral test, the person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but instead will reflect impaired speech.

18. Preemployment inquiries

Sec. 104.14, concerning preemployment inquiries, generated a large number of comments. Commenters representing handicapped persons strongly favored a ban on preemployment inquiries on the ground that such inquiries are often used to discriminate against handicapped persons and are not necessary to serve any legitimate interests of employers. Some recipients, on the other hand, argued that preemployment inquiries are necessary to determine qualifications of the applicant, safety hazards caused by a particular handicapping condition, and accommodations that might be required.

The Secretary has concluded that a general prohibition of preemployment inquiries is appropriate. However, a sentence has been added to paragraph (a) to make clear that an employer may inquire into an applicant's ability to perform job-related tasks but may not ask if the person has a handicap. For example, an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license (if that is a necessary qualification for the position in question). Similarly, employers may make inquiries about an applicant's ability to perform a job safely. Thus, an employer may not ask if an applicant is an epileptic but may ask whether the person can perform a particular job without endangering other employees.

Sec. 104.14(b) allows preemployment inquiries only if they are made in conjunction with required remedial action to correct past discrimination, with voluntary action to overcome past conditions that have limited the participation of handicapped persons, or with obligations under Sec. 503 of the Rehabilitation Act of 1973. In these instances, paragraph (b) specifies certain safeguards that must be followed by the employer.

Finally, the revised provision allows an employer to condition offers of employment to handicapped persons on the results of medical examinations, so long as the examinations are administered to all employees in a nondiscriminatory manner and the results are treated on a confidential basis.

19. Specific acts of discrimination

Secs. 104.15 (recruitment), 104.16 (compensation), 104.17 (job classification and structure) and 104.18 (fringe benefits) have been deleted from the regulation as unnecessarily duplicative of 104.11 (discrimination prohibited). The deletion of these sections in no way changes the substantive obligations of employers subject to this regulation from those set forth in the July 16 proposed regulation. These

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deletions bring the regulation closer in form to the Department of Labor's Sec. 503 regulation.

A proposed section, concerning fringe benefits, had allowed for differences in benefits or contributions between handicapped and nonhandicapped persons in situations only where such differences could be justified on an actuarial basis. Sec. 104.11 simply bars discrimination in providing fringe benefits and does not address the issue of actuarial differences. The Department believes that currently available data and experience do not demonstrate a basis for promulgating a regulation specifically allowing for differences in benefits or contributions.

Subpart C—Program Accessibility

In general, Subpart C prohibits the exclusion of qualified handicapped persons from federally assisted programs or activities because a recipient's facilities are inaccessible or unusable.

20. Existing facilities

Sec. 104.22 maintains the same standard for nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipients program or activity, when viewed in its entirety, must be readily accessible to and usable by handicapped persons. Paragraphs (a) and (b) make clear that a recipient is not required to make each of its existing facilities accessible to handicapped persons if its program as a whole is accessible. Accessibility to the recipient's program or activity may be achieved by a number of means, including redesign of equipment, reassignment of classes or other services to accessible buildings, and making aides available to beneficiaries. In choosing among methods of compliance, recipients are required to give priority consideration to methods that will be consistent with provision of services in the most appropriate integrated setting. Structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible.

Under 104.22, a university does not have to make all of its existing classroom buildings accessible to handicapped students if some of its buildings are already accessible and if it is possible to reschedule or relocate enough classes so as to offer all required courses and a reasonable selection of elective courses in accessible facilities. If sufficient relocation of classes is not possible using existing facilities, enough alterations to ensure program accessibility are required. A university may not exclude a handicapped student from a specifically requested course offering because it is not offered in an accessible location, but it need not make every section of that course accessible.

Commenters representing several institutions of higher education have suggested that it would be appropriate for one postsecondary institution in a geographical area to be made accessible to handicapped persons and for other colleges and universities in that area to participate in that school's program, thereby developing an educational consortium for the postsecondary education of handicapped students. The Department believes that such a consortium, when developed and applied only to handicapped persons, would not constitute compliance with 104.22, but would discriminate against qualified handicapped persons by restricting their choice in selecting institutions of higher education and would, therefore, be inconsistent with the basic objectives of the statute.

Nothing in this regulation, however, should be read as prohibiting institutions from forming consortia for the benefit of all students. Thus, if three colleges decide that it would be cost- efficient for one college to offer biology, the second physics, and the third chemistry to all students at the three colleges, the arrangement would not violate Sec. 504. On the other hand, it would violate the regulation if the same institutions set up a consortium under which one college undertook to make its biology lab accessible, another its physics lab, and a third its chemistry lab, and under which mobility-impaired handicapped students (but not other students) were required to attend the particular college that is accessible for the desired courses.

Similarly, while a public school district need not make each of its buildings completely accessible, it may not make only one facility or part of a facility accessible if the result is to segregate handicapped students in a single setting.

All recipients that provide health, welfare, or other social services may also comply with 104.22 by delivering services at alternate accessible sites or making home visits. Thus, for example, a pharmacist

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might arrange to make home deliveries of drugs. Under revised 104.22(c), small providers of health, welfare, and social services (those with fewer than fifteen employees) may refer a beneficiary to an accessible provider of the desired service, but only if no means of meeting the program accessibility requirement other than a significant alteration in existing facilities is available. The referring recipient has the responsibility of determining that the other provider is in fact accessible and willing to provide the service.

A recent change in the tax law may assist some recipients in meeting their obligations under this section. Under Sec. 2122 of the Tax Reform Act of 1976, recipients that pay federal income tax are eligible to claim a tax deduction of up to $25,000 for architectural and transportation modifications made to improve accessibility for handicapped persons. See 42 FR 17870 (April 4, 1977), adopting 26 CFR 7.190.

Several commenters expressed concern about the feasibility of compliance with the program accessibility standard. The Secretary believes that the standard is flexible enough to permit recipients to devise ways to make their programs accessible short of extremely expensive or impractical physical changes in facilities. Accordingly, the section does not allow for waivers. The Department is ready at all times to provide technical assistance to recipients in meeting their program accessibility responsibilities. For this purpose, the Department is establishing a special technical assistance unit. Recipients are encouraged to call upon the unit staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirement.

Paragraph (d) has been amended to require recipients to make all nonstructural adjustments necessary for meeting the program accessibility standard within sixty days. Only where structural changes in facilities are necessary will a recipient be permitted up to three years to accomplish program accessibility. It should be emphasized that the three-year time period is not a waiting period and that all changes must be accomplished as expeditiously as possible. Further, it is the Department's belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural additions will be made promptly to comply with 104.22(d).

The regulation continues to provide, as did the proposed version, that a recipient planning to achieve program accessibility by making structural changes must develop a transition plan for such changes within six months of the effective date of the regulation. A number of commenters suggested extending that period to one year. The secretary believes that such an extension is unnecessary and unwise. Planning for any necessary structural changes should be undertaken promptly to ensure that they can be completed within the three-year period. The elements of the transition plan as required by the regulation remain virtually unchanged from the proposal but 104.22(d) now includes a requirement that the recipient make the plan available for public inspection.

Several commenters expressed concern that the program accessibility standard would result in the segregation of handicapped persons in educational institutions. The regulation will not be applied to permit such a result. See 104.4(c)(2)(iv), prohibiting unnecessarily separate treatment; 104.35, requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs; and new 104.43(d), applying the same standard to postsecondary education.

We have received some comments from organizations of handicapped persons on the subject of requiring, over an extended period of time, a barrier-free environment that is, requiring the removal of all architectural barriers in existing facilities. The Department has considered these comments but has decided to take no further action at this time concerning these suggestions, believing that such action should only be considered in light of experience in implementing the program accessibility standard.

21. New construction

Sec. 104.23 requires that all new facilities, as well as alterations that could affect access to and use of existing facilities, be designed and constructed in a manner so as to make the facility accessible to and usable by handicapped persons. Sec. 104.23(a) has been amended so that it applies to each newly constructed facility if the construction was commenced after the effective date of the regulation. The words

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"if construction has commenced" will be considered to mean "if groundbreaking has taken place." Thus, a recipient will not be required to alter the design of a facility that has progressed beyond groundbreaking prior to the effective date of the regulation.

Paragraph (b) requires certain alterations to conform to the requirement of physical accessibility in paragraph (a). If an alteration is undertaken to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway or wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of altering ceilings, the provisions of this section are not applicable because this alteration cannot be done in a way that affects the accessibility of that portion of the building. The phrase "to the maximum extent feasible" has been added to allow for the occasional case in which the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate the building in a manner that results in its being entirely barrier-free. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

As proposed, 104.23(c) required compliance with the American National Standards Institute (ANSI) standard on building accessibility as the minimum necessary for compliance with the accessibility requirement of 104.23 (a) and (b). The reference to the ANSI standard created some ambiguity, since the standard itself provides for waivers where other methods are equally effective in providing accessibility to the facility.

Moreover, the Secretary does not wish to discourage innovation in barrier-free construction by requiring absolute adherence to a rigid design standard. Accordingly, 104.23 (c) has been revised to permit departures from particular requirements of the ANSI standard where the recipient can demonstrate that equivalent access to the facility is provided.

Sec. 104.23(d) of the proposed regulation, providing for a limited deferral of action concerning facilities that are subject to Sec. 502 as well as Sec. 504 of the Act, has been deleted. The Secretary believes that the provision is unnecessary and inappropriate to this regulation. The Department will, however, seek to coordinate enforcement activities under this regulation with those of the Architectural and Transportation Barriers Compliance Board.

Subpart D—Preschool, Elementary, and Secondary Education

Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term "adult education" refers only to those educational programs and activities for adults that are operated by elementary and secondary schools.

The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, 104.32 and 104.33 apply only to public programs and 104.39 applies only to private programs; 104.35 and 104.36 apply both to public programs and to those private programs that include special services for handicapped students.

Subpart B generally conforms to the standards established for the education of handicapped persons in Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972), Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 344 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and Lebanks v. Spears, 60, F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Pub. L. 94-142 (the EHA).

The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education, (2) that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs, (3) that educational agencies undertake to identify and locate all unserved handicapped children, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. These requirements are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular educational setting cannot be achieved satisfactorily, that the student is provided with adequate alternative services suited to the student's needs without additional cost to the student's parents or guardian. Thus, a recipient that operates a public school system must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense.

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of this subpart (concerning identification and location, evaluation, and due process procedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

22. Location and notification

Sec. 104.32 requires public schools to take steps annually to identify and locate handicapped children who are not receiving an education and to publicize to handicapped children and their parents the rights and duties established by Sec. 504 and this regulation. This section has been shortened without substantive change.

23. Free appropriate public education

Under 104.33(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word "in" encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains financially responsible for the child, whether or not the other program is operated by another recipient or educational agency. Moreover, a recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D. And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of another person's or entity's failure to assume financial responsibility.

Sec. 104.33(b) concerns the provision of appropriate educational services to handicapped children. To be appropriate, such services must be designed to meet handicapped children's individual educational needs to the same extent that those of nonhandicapped children are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic services). The placement of the child must however, be consistent with the requirements of 104.34 and be suited to his or her educational needs.

The quality of the educational services provided to handicapped students must equal that of the services provided to nonhandicapped students; thus, handicapped student's teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available. The Department is aware that the supply of adequately trained teachers may, at least at the outset of the imposition of this requirement, be insufficient to meet the demand of all recipients. This factor will be considered in determining the appropriateness of the remedy for noncompliance with this section. A new 104.33(b)(2) has been added, which allows this requirement to be met through the full implementation of an individualized education program developed in accordance with the standards of the EHA.

Paragraph (c) of 104.33 sets forth the specific financial obligations of a recipient. If a recipient does not itself provide handicapped persons with the requisite services, it must assume the cost of any alternate placement. If, however, a recipient offers adequate services and if alternate placement is chosen by a student's parent or guardian, the recipient need not assume the cost of the outside services. (If the parent or guardian believes that his or her child cannot be suitably educated in the recipient's program, he or she may make use of the procedures established in 104.36.) Under this paragraph, a recipient's obligation extends

[redacted]

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beyond the provision of tuition payments in the case of placement outside the regular program. Adequate transportation must also be provided. Recipients must also pay for psychological services and those medical services necessary for diagnostic and evaluative purposes.

If the recipient places a student, because of his or her handicap, in a program that necessitates his or her being away from home, the payments must also cover room and board and nonmedical care (including custodial and supervisory care). When residential care is necessitated not by the student's handicap but by factors such as the student's home conditions, the recipient is not required to pay the cost of room and board.

Two new sentences have been added to paragraph (c)(1) to make clear that a recipient's financial obligations need not be met solely through its own funds. Recipients may rely on funds from any public or private source including insurers and similar third parties.

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1978," but Sec. 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to 104.33. Sec. 104.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of 104.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in Sec. 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

24. Educational setting

Sec. 104.34 prescribes standards for educating handicapped persons with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question. A handicapped student may be removed from the regular educational setting only where the recipient can show that the needs of the student would, on balance, be served by placement in another setting.

Although under 104.34, the needs of the handicapped person are determinative as to proper placement, it should be stressed that, where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by 104.34.

Among the factors to be considered in placing a child is the need to place the child as close to home as possible. A new sentence has been added to paragraph (a) requiring recipients to take this factor into account. As pointed out in several comments, the parents' right under 104.36 to challenge the placement of their child extends not only to placement in special classes or separate schools but also to placement in a distant school and, in particular, to residential placement. An equally appropriate educational program may exist closer to home; this issue may be raised by the parent or guardian under 104.34 and 104.36.

New paragraph (b) specified that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.

Sec. 104.34(c) requires that any facilities that are identifiable as being for handicapped students be comparable in quality to other facilities of the recipient. A number of comments objected to this section on the basis that it encourages the creation and maintenance of such facilities. This is not the intent of the provision. A separate facility violates Sec. 504 unless it is indeed necessary to the provision of an appropriate education to certain handicapped students. In those instances in which such facilities are necessary (as might be the case, for example, for severely retarded persons), this provision requires that the educational services provided be comparable to those provided in the facilities of the recipient that are not identifiable as being for handicapped persons.

25. Evaluation and placement

[redacted]

Because the failure to provide handicapped persons with an appropriate education is so frequently the result of misclassification or misplacement, 104.33(b)(1) makes compliance with its provisions contingent upon adherence to certain procedures designed to ensure appropriate classification and placement. These procedures, delineated in 104.35 and 104.36, are concerned with testing and other evaluation methods and with procedural due process rights.

Sec. 104.35(a) requires that an individual evaluation be conducted before any action is taken with respect either to the initial placement of a handicapped child in a regular or special education program or to any subsequent significant change in that placement. Thus, a full reevaluation is not required every time an adjustment in placement is made. "Any action" includes denials of placement.

Paragraphs (b) and (c) of 104.35 establishes procedures designed to ensure that children are not misclassified, unnecessarily labeled as being handicapped, or incorrectly placed because of inappropriate selection, administration, or interpretation of evaluation materials. This problem has been extensively documented in "Issues in the Classification of Children," a report by the Project on Classification of Exceptional Children, in which the HEW Interagency Task Force participated. The provisions of these paragraphs are aimed primarily at abuses in the placement process that result from misuse of, or undue or misplaced reliance on, standardized scholastic aptitude tests.

Paragraph (b) has been shortened but not substantively changed. The requirement in former subparagraph (1) that recipients provide and administer evaluation materials in the native language of the student has been deleted as unnecessary, since the same requirement already exists under title VI and is more appropriately covered under that statute. Paragraphs (1) and (2) are, in general, intended to prevent misinterpretation and similar misuse of test scores and, in particular, to avoid undue reliance on general intelligence tests. Subparagraph (3) requires a recipient to administer tests to a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment. Former subparagraph (4) has been deleted as unnecessarily repetitive of the other provisions of this paragraph.

Paragraph (c) requires a recipient to draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. In particular, it requires that all significant factors relating to the learning process, including adaptive behavior, be considered. (Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.) Information from all sources must be documented and considered by a group of persons, and the procedure must ensure that the child is placed in the most integrated setting appropriate.

The proposed regulation would have required a complete individual reevaluation of the student each year. The Department has concluded that it is inappropriate in the Sec. 504 regulation to require full reevaluations on such a rigid schedule. Accordingly, 104.35(c) requires periodic reevaluations and specifies that reevaluations in accordance with the EHA will constitute compliance. The proposed regulation implementing the EHA allows reevaluation at three-year intervals except under certain specified circumstances.

Under 104.36, a recipient must establish a system of due process procedures to be afforded to parents or guardians before the recipient takes any action regarding the identification, evaluation, or educational placement of a person who, because of handicap, needs or is believed to need special education or related services. This section has been revised. Because the due process procedures of the EHA, incorporated by reference in the proposed Sec. 504 regulation, are inappropriate for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the regulation's due process requirements, however, and are recommended to recipients as a model.

26. Nonacademic services

Sec. 104.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation. Because these services and activities are part of a recipient's education program, they must, in accordance with the provisions of 104.34, be provided in the most integrated setting appropriate.

Revised paragraph (c)(2) does permit separation or differentiation with respect to the provision of physical education and athletics activities, but only if qualified handicapped students are also allowed the opportunity to compete for regular teams or participate in regular activities. Most handicapped students are able to participate in one or more regular physical education and athletics activities. For example, a student in a wheelchair can participate in regular archery course, as can a deaf student in a wrestling course.

Finally, the one-year transition period provided in a proposed section was deleted in response to the almost unanimous objection of commenters to that provision.

27. Preschool and adult education

Sec. 104.38 prohibits discrimination on the basis of handicap in preschool and adult education programs. Former paragraph (b), which emphasized that compensatory programs for disadvantaged children are subject to Sec. 504, has been deleted as unnecessary, since it is comprehended by paragraph (a).

28. Private education

Sec. 104.39 sets forth the requirements applicable to recipients that operate private education programs and activities. The obligations of these recipients have been changed in two significant respects: first, private schools are subject to the evaluation and due process provisions of the subpart only if they operate special education programs; second, under 104.39(b), they may charge more for providing services to handicapped students than to nonhandicapped students to the extent that additional charges can be justified by increased costs.

Paragraph (a) of 104.39 is intended to make clear that recipients that operate private education programs and activities are not required to provide an appropriate education to handicapped students with special educational needs if the recipient does not offer programs designed to meet those needs. Thus, a private school that has no program for mentally retarded persons is neither required to admit such a person into its program nor to arrange or pay for the provision of the person's education in another program. A private recipient without a special program for blind students, however, would not be permitted to exclude, on the basis of blindness, a blind applicant who is able to participate in the regular program with minor adjustments in the manner in which the program is normally offered.

Subpart E—Postsecondary Education

Subpart E prescribes requirements for nondiscrimination in recruitment, admission, and treatment of students in postsecondary education programs and activities, including vocational education.

29. Admission and recruitment

In addition to a general prohibition of discrimination on the basis of handicap in 104.42(a), the regulation delineates, in 104.42(b), specific prohibitions concerning the establishment of limitations on admission of handicapped students, the use of tests or selection criteria, and preadmission inquiry. Several changes have been made in this provision.

Sec. 104.42(b) provides that postsecondary educational institutions may not use any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons unless it has been validated as a predictor of academic success and alternate tests or criteria with a less disproportionate, adverse effect are shown by the Department to be available. There are two significant changes in this approach from the July 16 proposed regulation.

First, many commenters expressed concern that 104.42(b)(2)(ii) could be interpreted to require a "global search" for alternate tests that do not have a disproportionate, adverse impact on handicapped persons. This was not the intent of the provision and, therefore, it has been amended to place the burden on the Assistant Secretary for Civil Rights, rather than on the recipient, to identify alternate tests.

Second, a new paragraph (d), concerning validity studies, has been added. Under the proposed regulation, overall success in an education program, not just first-year grades, was the criterion against which admissions tests were to be validated. This approach has been changed to reflect the comment of professional testing services that use of first year grades would be less disruptive of present practice and that periodic validity studies against overall success in the education program would be sufficient check on the reliability of first-year grades.

Sec. 104.42(b)(3) also requires a recipient to assure itself that admissions tests are selected and administered to applicants with impaired sensory, manual, or speaking skills in such manner as is necessary to avoid unfair distortion of test results. Methods have been developed for testing the aptitude and achievement of persons who are not able to take written tests or even to make the marks required for mechanically scored objective tests; in addition, methods for testing persons with visual or hearing impairments are available. A recipient, under this paragraph, must assure itself that such methods are used with respect to the selection and administration of any admissions tests that it uses.

Sec. 104.42(b)(3)(iii) has been amended to require that admissions tests be administered in facilities that, on the whole, are accessible. In this context, "on the whole" means that not all of the facilities need be accessible so long as a sufficient number of facilities are available to handicapped persons.

Revised 104.42(b)(4) generally prohibits preadmission inquiries as to whether an applicant has a handicap. The considerations that led to this revision are similar to those underlying the comparable revision of 104.14 on preemployment inquiries. The regulation does, however, allow inquiries to be made, after admission but before enrollment, as to handicaps that may require accommodation.

New paragraph (c) parallels the section on preemployment inquiries and allows postsecondary institutions to inquire about applicants' handicaps before admission, subject to certain safeguards, if the purpose of the inquiry is to take remedial action to correct past discrimination or to take voluntary action to overcome the limited participation of handicapped persons in postsecondary educational institutions.

Proposed 104.42(c), which would have allowed different admissions criteria in certain cases for handicapped persons, was widely misinterpreted in comments from both handicapped persons and recipients. We have concluded that the section is unnecessary, and it has been deleted.

30. Treatment of students

Sec. 104.43 contains general provisions prohibiting the discriminatory treatment of qualified handicapped applicants. Paragraph (b) requires recipients to ensure that equal opportunities are provided to its handicapped students in education programs and activities that are not operated by the recipient. The recipient must be satisfied that the outside education program or activity as a whole is nondiscriminatory. For example, a college must ensure that discrimination on the basis of handicap does not occur in connection with teaching assignments of student teachers in elementary or secondary schools not operated by the college. Under the "as a whole" wording, the college could continue to use elementary or secondary school systems that discriminate if, and only if, the college's student teaching program, when viewed in its entirety, offered handicapped student teachers the same range and quality of choice in student teaching assignments afforded nonhandicapped students.

Paragraph (c) of this section prohibits a recipient from excluding qualified handicapped students from any course, course of study, or other part of its education program or activity. This paragraph is designed to eliminate the practice of excluding handicapped persons from specific courses and from areas of concentration because of factors such as ambulatory difficulties of the student or assumptions by the recipient that no job would be available in the area in question for a person with that handicap.

New paragraph (d) requires postsecondary institutions to operate their programs and activities so that handicapped students are provided services in the most integrated setting appropriate. Thus, if a college had several elementary physics classes and had moved one such class to the first floor of the science building to accommodate students in wheelchairs, it would be a violation of this paragraph for the college to concentrate handicapped students with no mobility impairments in the same class.

31. Academic adjustments

Paragraph (a) of 104.44 requires that a recipient make certain adjustments to academic requirements and practices that discriminate or have the effect of discriminating on the basis of handicap. This requirement, like its predecessor in the proposed regulation, does not obligate an institution to waive course or other academic requirements. But such institutions must accommodate those requirements to the

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needs of individual handicapped students. For example, an institution might permit an otherwise qualified handicapped student who is deaf to substitute an art appreciation or music history course for a required course in music appreciation or could modify the manner in which the music appreciation course is conducted for the deaf student. It should be stressed that academic requirements that can be demonstrated by the recipient to be essential to its program of instruction or to particular degrees need not be changed.

Paragraph (b) provides that postsecondary institutions may not impose rules that have the effect of limiting the participation of handicapped students in the education program. Such rules include prohibition of tape recorders or braillers in classrooms and dog guides in campus buildings. Several recipients expressed concern about allowing students to tape record lectures because the professor may later want to copyright the lectures. This problem may be solved by requiring students to sign agreements that they will not release the tape recording or transcription or otherwise hinder the professor's ability to obtain a copyright.

Paragraph (c) of this section, concerning the administration of course examinations to students with impaired sensory, manual, or speaking skills, parallels the regulation's provisions on admissions testing (104.42(b)) and will be similarly interpreted.

Under 104.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities expressed concern about the costs of compliance with this provision.

The Department emphasizes that recipients can usually meet this obligation by assisting students in using existing resources for auxiliary aids such as state vocational rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges or universities. In those circumstances where the recipient institution must provide the educational auxiliary aid, the institution has flexibility in choosing the methods by which the aids will be supplied. For example, some universities have used students to work with the institution's handicapped students. Other institutions have used existing private agencies that tape texts for handicapped students free of charge in order to reduce the number of readers needed for visually impaired students.

As long as no handicapped person is excluded from a program because of the lack of an appropriate aid, the recipient need not have all such aids on hand at all times. Thus, readers need not be available in the recipient's library at all times so long as the schedule of times when a reader is available is established, is adhered to, and is sufficient. Of course, recipients are not required to maintain a complete braille library.

32. Housing

Sec. 104.45(a) requires postsecondary institutions to provide housing to handicapped students at the same cost as they provide it to other students and in a convenient, accessible, and comparable manner. Commenters, particularly blind persons pointed out that some handicapped persons can live in any college housing and need not wait to the end of the transition period in Subpart C to be offered the same variety and scope of housing accommodations given to nonhandicapped persons. The Department concurs with this position and will interpret this section accordingly.

A number of colleges and universities reacted negatively to paragraph (b) of this section. It provides that, if a recipient assists in making off-campus housing available to its students, it should develop and implement procedures to assure itself that off- campus housing, as a whole, is available to handicapped students. Since postsecondary institutions are presently required to assure themselves that off-campus housing is provided in a manner that does not discriminate on the basis of sex (106.32 of the title IX regulation), they may use the procedures developed under title IX in order to comply with 104.45(b). It should be emphasized that not every off-campus living accommodation need be made accessible to handicapped persons.

33. Health and insurance

A proposed section, providing that recipients may not discriminate on the basis of handicap in the provision of health related services, has been deleted as duplicative of the general provisions of 104.43. This deletion represents no change in the obligation of recipients to provide nondiscriminatory health and insurance plans. The Department will continue to require that nondiscriminatory health services be provided to handicapped students. Recipients are not required, however, to provide specialized services and aids to handicapped persons in health programs. If, for example, a college infirmary treats only simple disorders such as cuts, bruises, and colds, its obligation to handicapped persons is to treat such disorders for them.

34. Financial assistance

Sec. 104.46(a), prohibiting discrimination in providing financial assistance, remains substantively the same. It provides that recipients may not provide less assistance to or limit the eligibility of qualified handicapped persons for such assistance, whether the assistance is provided directly by the recipient or by another entity through the recipient's sponsorship. Awards that are made under wills, trusts, or similar legal instruments in a discriminatory manner are permissible, but only if the overall effect of the recipient's provision of financial assistance is not discriminatory on the basis of handicap.

It will not be considered discriminatory to deny, on the basis of handicap, an athletic scholarship to a handicapped person if the handicap renders the person unable to qualify for the award. For example, a student who has a neurological disorder might be denied a varsity football scholarship on the basis of his inability to play football, but a deaf person could not, on the basis of handicap, be denied a scholarship for the school's diving team. The deaf person could, however, be denied a scholarship on the basis of comparative diving ability.

Commenters on 104.46(b), which applies to assistance in obtaining outside employment for students, expressed similar concerns to those raised under 104.43(b), concerning cooperative programs. This paragraph has been changed in the same manner as 104.43(b) to include the "as a whole" concept and will be interpreted in the same manner as 104.43(b).

35. Nonacademic services

Sec. 104.47 establishes nondiscrimination standards for physical education and athletics counseling and placement services, and social organizations. This section sets the same standards as does 104.38 of Subpart D, discussed above, and will be interpreted in a similar fashion.

Subpart F—Health, Welfare, and Social Services

Subpart F applies to recipients that operate health, welfare, and social service programs. The Department received fewer comments on this subpart than on others.

Although many commented that Subpart F lacked specificity, these commenters provided neither concrete suggestions nor additions. Nevertheless, some changes have been made, pursuant to comment, to clarify the obligations of recipients in specific areas. In addition, in an effort to reduce duplication in the regulation, the section governing recipients providing health services has been consolidated with the section regulating providers of welfare and social services. Since the separate provisions that appeared in the proposed regulation were almost identical, no substantive change should be inferred from their consolidation.

Several commenters asked whether Subpart F applies to vocational rehabilitation agencies whose purpose is to assist in the rehabilitation of handicapped persons. To the extent that such agencies receive financial assistance from the Department, they are covered by Subpart F and all other relevant subparts of the regulation. Nothing in this regulation, however, precludes such agencies from servicing only handicapped persons. Indeed, 104.4(c) permits recipients to offer services or benefits that are limited by federal law to handicapped persons or classes of handicapped persons.

Many comments suggested requiring state social service agencies to take an active role in the enforcement of Sec. 504 with regard to local social service providers. The Department believes that the possibility for federal-state cooperation in the administration and enforcement of Sec. 504 warrants further consideration.

A number of comments also discussed whether Sec. 504 should be read to require payment of compensation to institutionalized handicapped patients who perform services for the institution in which they reside. The Department of Labor has recently issued a proposed regulation under the Fair Labor

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Standards Act (FLSA) that covers the question of compensation for institutionalized persons. 42 FR 15224 (March 18, 1977). This Department will seek information and comment from the Department of Labor concerning that agency's experience administering the FLSA regulation.

36. Health, welfare, and other social service providers

Sec. 104.52(a) has been expanded in several respects. The addition of new paragraph (a)(2) is intended to make clear the basic requirement of equal opportunity to receive benefits or services in the health, welfare, and social service areas. The paragraph parallels 104.4(b)(ii) and 104.43(b). New paragraph (a)(3) requires the provision of effective benefits or services, as defined in 104.4(b)(2) (i.e., benefits or services which "afford handicapped persons equal opportunity to obtain the same result (or) to gain the same benefit * * *").

Sec. 104.52(a) also includes provisions concerning the limitation of benefits or services to handicapped persons and the subjection of handicapped persons to different eligibility standards. One common misconception about the regulation is that it would require specialized hospitals and other health care providers to treat all handicapped persons. The regulation makes no such requirement. Thus, a burn treatment center need not provide other types of medical treatment to handicapped persons unless it provides such medical services to nonhandicapped persons. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness.

Commenters had raised the question of whether the prohibition against different standards of eligibility might preclude recipients from providing special services to handicapped persons or classes of handicapped persons. The regulation will not be so interpreted, and the specific section in question has been eliminated. Sec. 104.4(c) makes clear that special programs for handicapped persons are permitted.

A new paragraph (a)(5) concerning the provision of different or separate services or benefits has been added. This provision prohibits such treatment unless necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

Sec. 104.52(b) has been amended to cover written material concerning waivers of rights or consent to treatment as well as general notices concerning health benefits or services. The section requires the recipient to ensure that qualified handicapped persons are not denied effective notice because of their handicap. For example, recipients could use several different types of notice in order to reach persons with impaired vision or hearing, such as brailled messages, radio spots, and tactical devices on cards or envelopes to inform blind persons of the need to call the recipient for further information.

Sec. 104.52(c) is a new section requiring recipient hospitals to establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care. Although it would be appropriate for a hospital to fulfill its responsibilities under this section by having a full-time interpreter for the deaf on staff, there may be other means of accomplishing the desired result of assuring that some means of communication is immediately available for deaf persons needing emergency treatment.

Sec. 104.52(c), also a new provision, requires recipients with fifteen or more employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills. Further, the Assistant Secretary may require a small provider to furnish auxiliary aids where the provision of aids would not adversely affect the ability of the recipient to provide its health benefits or service.

37. Treatment of drug addicts and alcoholics

Sec. 104.53 is a new section that prohibits discrimination in the treatment and admission of drug and alcohol addicts to hospitals and outpatient facilities. Sec. 104.53 prohibits discrimination against drug abusers by operators of outpatient facilities, despite the fact that Sec. 407 pertains only to hospitals, because of the broader application of Sec. 504. This provision does not mean that all hospitals and outpatient facilities must treat drug addiction and alcoholism. It simply means, for example, that a cancer clinic may not refuse to treat cancer patients simply because they are also alcoholics.

38. Education of institutionalized persons

The regulation retains 104.54 of the proposed regulation that requires that an appropriate education be provided to qualified handicapped persons who are confined to residential institutions or day care centers.

Subpart G—Procedures

In 104.61, the Secretary has adopted the title VI complaint and enforcement procedures for use in implementing Sec. 504 until such time as they are superseded by the issuance of a consolidated procedural regulation applicable to all of the civil rights statutes and executive orders administered by the Department.

APPENDIX B TO PART 104—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

Editorial Note: For the text of these guidelines, see 34 CFR Part 100, Appendix B.

APPENDIX B

Sample Forms

Utility of Form — To provide general information about Section 504.

INFORMATION FOR PARENTS REGARDING SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 is an Act that prohibits discrimination against persons with a disability in any program that receives federal financial assistance. The Act defines a person with a disability as anyone who:

> *Has a mental or physical impairment that substantially limits one or more major life activities (major life activities include activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working).*

In order to fulfill its obligations under Section 504/ADA, the school recognizes a responsibility to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability will knowingly be permitted in any of the programs and practices in the school system.

The school has specific responsibilities under the Act, which include the responsibility to identify, evaluate and, if the student is determined to be eligible under Section 504/ADA, to afford access to appropriate educational services.

If the parent or guardian disagrees with the determination made by the professional staff of the school, he/she has a right to a hearing with an impartial hearing officer.

The Family Educational Rights and Privacy Act (FERPA) also specifies rights related to educational records. This Act gives the parent or guardian the right to:

- Inspect and review his/her child's educational records.
- Make copies of these records.
- Receive a list of all individuals having access to those records.
- Ask for an explanation of any item in the records.
- Ask for an amendment to any report on the grounds that it is inaccurate, misleading, or violates the child's rights.
- A hearing on the issue if the school refuses to make the amendment.

If there are questions, please feel free to contact

____

Section 504/ADA Coordinator

____

Phone

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Utility of Form — To be used as a referral form when an evaluation is being requested.

SECTION 504 REFERRAL

Student ______________________ Date ______________________

School ______________________ Date of Birth ______________________

Teacher ______________________ Grade ______________________

Parent ______________________ Phone ______________________

Address ______________________

Referred by ______________________

Position ______________________

1. Reason for referral: ______________________

2. Accommodations and interventions attempted (Teacher Assistance Team):

3. Has the student ever been referred, evaluated, and/or received services from special education? _____ YES _____ NO If yes, explain:

4. Referral action:

______________________ ______________________

Signature of Section 504 Coordinator Date

Utility of Form — To provide written notice to the parents when a referral for evaluation to consider Section 504 services is made.

NOTICE TO PARENTS

SECTION 504 MEETING

Student ______________________________ Date __________

School ______________________________

Dear Parent or Guardian:

This letter is to inform you that we have some concerns about your child's progress at school. We have attempted some interventions with your child. They include:

____
____
____
____
____
____
____

We would like to arrange a meeting to discuss eligibility for further accommodations/services in order to ensure that your child is afforded an appropriate education. We have scheduled a meeting on ______________________. This meeting will be held at ______________________________ to discuss your child's educational needs. We would very much appreciate your participation.

If you have any questions, or if this meeting time is not convenient for you, please call me at __________________. We will discuss your questions or arrange a mutually convenient meeting time.

Sincerely,

____
Name Position

Utility of Form — To provide parents with their rights and request consent to conduct a Section 504 evaluation.

SECTION 504 PARENT RIGHTS

School ________________________________ Date __________

The intent of this notice is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

If your child is eligible for Section 504 services, you have the right to:

1. Have your child take part in and receive benefits from public education programs without discrimination based on a disability.
2. Receive written notice with respect to identification, evaluation, or placement of your child.
3. Have your child receive a free appropriate public education. This includes the right to be educated with other students without disabilities to the maximum extent appropriate.
4. Have your child educated in facilities and receive services comparable to those provided to students without disabilities.
5. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by individuals who know your child, the evaluation data, and placement options.
6. If eligible, have your child receive accommodations under Section 504 of the Rehabilitation Act of 1973.
7. Give your child an equal opportunity to participate in non-academic and extracurricular activities offered by the school.
8. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement.
9. Obtain copies of educational records at a reasonable cost if the fee would effectively deny you access to the records.
10. Receive a response from the school to reasonable requests for explanations and interpretations of your child's records.

11. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child. If the school refuses this request, it shall notify you within a reasonable time, and advise you of the right to a hearing.
12. Request mediation or an impartial due process hearing related to decisions regarding your child's identification, evaluation, educational program, or placement. You and your child may take part in the hearing and have an attorney represent you.
13. File a local grievance or complaint to the Office for Civil Rights in Denver, Colorado. The office is part of the U.S. Department of Education. The regional office is located at 1244 Speer Boulevard, Suite 310, Denver, Colorado, 80204-3582.

The person at the school who is responsible for Section 504/ADA compliance is:

______________________	________________
Section 504 Coordinator	Telephone Number

- -

CONSENT

The school is requesting your consent to conduct the following evaluation procedure:

Evaluation Procedures	Person Responsible

I give written consent to have my child evaluated for possible Section 504 eligibility.

______________________________	______________________________
Parent signature	Date

Utility of Form — Gives parents general information about Section 504 evaluation procedures.

SECTION 504 EVALUATION PROCEDURES

If the school suspects a student has a disability, then parental notice is given and an individual evaluation is conducted. The following are some considerations for meeting 504 evaluation requirements.

1. The evaluation team must be knowledgeable about the student, disability, and be familiar with the evaluation data and placement options.
2. Each evaluation should be tailored to the specific needs of the student.
3. The parents need to be notified before the evaluation is conducted. Consent is not required, but is considered **best practice**.
4. Tests and other evaluation materials should be validated for the specific purpose for which they are used and administered by trained personnel in conformance with the instructions provided by their producer.
5. Tests and other evaluation materials include those tailored to assess specific areas of educational need.
6. Tests are selected to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the results accurately reflect whatever the test is designed to measure.
7. In interpreting evaluation data and in making placement or accommodation decisions, a school should draw upon information from a variety of sources, including aptitude and achievement tests, interest inventories, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.
8. A reevaluation should be conducted before making any significant change in placement. A reevaluation procedure consistent with the Individuals with Disabilities in Education Act is one means of meeting this requirement.

The school may refuse to conduct an evaluation, but has the obligation to inform the parents of the reasons for the refusal and their right to file a grievance, contact the Office for Civil Rights, or request a due process hearing.

Utility of Form — To be used at the Section 504 committee meeting for documenting evaluation results and determining eligibility.

SECTION 504 TEAM MEETING SUMMARY

Student ______________________ Date ______________ Grade __________

School ______________________________ Birthdate ________________

Address ______________________________ Phone __________________

Case Manager __________________________

PARTICIPANTS — Staff knowledgeable about the student, disability, and the results of the evaluation data.

SUMMARY OF EVALUATION DATA — Information from a variety of sources, including, as relevant, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

Determination of whether the student has a disability under Section 504

_____ The student **does not** have a physical or mental impairment that substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

_____ The student **has** a physical or mental impairment that substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Utility of Form — To document what accommodations will be necessary for the student to benefit from his/her education.

PART II STUDENT ACCOMMODATIONS

Accommodation 1 ____________________________________

Evaluation ____________________________________

Accommodation 2 ____________________________________

Evaluation ____________________________________

Accommodation 3 ____________________________________

Evaluation ____________________________________

Accommodation 4 ____________________________________

Evaluation ____________________________________

DURATION OF ACCOMMODATION(S) From ____________ To____________

Review/Reassessment Date ________________________

Participants

Name	Title	Date

I give permission for my child to receive the above mentioned accommodations.

____

Parent Date

Utility of Form — To document what accommodations will be necessary for the student to benefit from his/her education.

SECTION 504
STUDENT ACCOMMODATION PLAN

Student ______________________________ Date ________________

School _______________________________ DOB ________________

Review Date ___________________________ Case Manager _________

Part 1: Justification for services

1. The student have a physical or mental impairment that substantially limits one or more of his/her major life activities that impacts his/her educational programs.

   ☐ YES ☐ NO

   ☐ caring for one's self
   ☐ performing manual tasks
   ☐ walking
   ☐ seeing
   ☐ breathing
   ☐ hearing
   ☐ speaking
   ☐ working
   ☐ learning

2. The impairment impacts the child's educational program.

   ☐ YES ☐ NO

3. Is the student eligible for Section 504 accommodations?

   ☐ YES ☐ NO

4. Briefly document the basis for determining the disability. ____________________

   ____

   ____

   ____

5. Describe areas of need and action to be taken. ____________________

   ____

   ____

   ____

(continued)

Part I — Required Accommodations

Area ____________________

Accommodations ____________________

____

____

Evaluation ____________________

____

Area ____________________

Accommodations ____________________

____

____

Evaluation ____________________

____

Area ____________________

Accommodations ____________________

____

____

Evaluation ____________________

____

Area ____________________

Accommodations ____________________

____

____

Evaluation ____________________

____

I give permission for my child to receive the above mentioned services.

____________________ ____________________

Parent Date

Utility of Form — To document what accommodations will be necessary for the student to benefit from his/her education.

SECTION 504 ACCOMMODATION PLAN

Student ______________________ Date ______________

Case Manager ______________________

Justification for Section 504 Eligibility ______________________________
____
____
____

Check each area where special accommodations/services will help the student meet success at school.

☐ Seating
☐ Writing
☐ Space
☐ Physical Education
☐ Problem Solving
☐ Communication
☐ Assignment Completion
☐ Note Taking
☐ Spelling
☐ Organization
☐ Assistive Devices
☐ Time
☐ Interpersonal Skills
☐ Listening
☐ Reading
☐ Vocabulary
☐ Math
☐ Test Taking
☐ Memory
☐ Homework
☐ Other_____

Accommodations and Services

1. ____
____
____
____

2. ____
____
____
____

(continued)

3.____

4.____

5.____

6.____

7.____

I give permission for my child to receive the above-mentioned services.

Parent Date

Section 504 Committee Members

Utility of Form — To be used as documentation of review progress and future recommendations

SECTION 504 REVIEW OF SERVICES

Student ________________________ Date ____________

Case Manager ________________________________

Purpose of meeting: It is necessary to periodically review the student's progress under Section 504 services and make recommendations to continue, modify, or terminate the program(s) (504 plan should be reviewed once each year.)

Discussion of progress ________________________________

____

____

____

Recommendation

[ ] Continue present services with no changes.
[ ] Modify the present program (see attached).
[ ] Conduct additional evaluations.
[ ] Exit from program based upon the following evaluation results.

Discussion of recommendations ________________________

____

____

____

The following members of the Section 504 committee agree with the recommendations.

Signature(s)

______________________	______________________
Parent	Counselor
______________________	______________________
Classroom Teacher	School Nurse
______________________	______________________
School Principal	Other

APPENDIX C

Important OCR Policy Letters

- **CLARIFICATION OF THE 2ND AND 3RD PRONG OF SECTION 504/ADA**
- **LONG-TERM SUSPENSION OR EXPULSION OF HANDICAPPED STUDENTS**
- **ADD/ADHD**
- **OCR FACTS: SECTION 504 COVERAGE OF CHILDREN WITH ADD**

19 IDELR 894
1 ECLPR ¶ 288

OCR Senior Staff Memorandum (Eligibility)

Office for Civil Rights

August 3, 1992

Richard D. Komer, Deputy Assistant Secretary

- Eligibility Criteria, In General
- Rehabilitation Act (Section 504), Facilities/Persons Covered by Section 504
- U.S. Department of Education, Office for Civil Rights (OCR)

Summary

OCR released a memorandum to its senior staff to clarify the second and third prongs of the definition of a "handicapped person" under Section 504. According to the memorandum, a person who falls under either of these prongs of the statutory definition at 29 USC 706(8) is entitled to Section 504 protection only when the alleged discriminatory action is based on the fact that he/she has a "record of" or is "regarded as" handicapped. Unless a person actually has a handicapping condition, the mere fact that he/she has a "record of" or is "regarded as" handicapped is insufficient, by itself, to trigger those Section 504 protections that require special treatment (such as FAPE or reasonable accommodation) of persons with physical or mental impairments that substantially limit one or more major life activities.

It has come to our attention that there are some misperceptions of the purpose and intent of the second and third prongs of the definition of "handicapped person" contained in the Section 504 statute and regulation. The definition of "individuals with handicaps" in the Rehabilitation Act of 1973 at 29 U.S.C. § 706(8)(B) is:

> . . ."individual with handicaps" means, . . .any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

The first prong of the definition is clear. A person must have an impairment which substantially limits one or more major life activities. However, a person who falls under the second or third prong of the definition, is protected by Section 504 only when negative action is taken based on the fact that he/she has "a record of" or is "regarded as" handicapped.

The reason for the inclusion of the second and third prongs of the definition is explained in the regulation at Section 104.3(j)(2)(iii) and (iv), and is further clarified in Appendix A at ¶ 3. Those two prongs of the definition are legal fictions. They are meant to reach situations where individuals either never were or are not currently handicapped, but are treated by others as if they were. For instance, a person with severe facial scarring may be denied a job because she is "regarded as" handicapped. A person with a history of mental illness may be denied admission to college because of that "record" of a handicap. The persons are not, in fact,

[redacted]

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handicapped, but have been treated by others as if they were. It is the negative action taken based on the perception or the record that entitles a person to protection against discrimination on the basis of the assumptions of others.

The use of these prongs of the definition of handicapped person arises most often in the area of employment, and sometimes in the area of postsecondary education. It is rare for these prongs to be used in elementary and secondary student cases. They *cannot* be the basis upon which the requirement for FAPE is triggered. Logically, since the student is not, in fact, mentally or physically handicapped, there can be no need for special education or related aids and services.

We have had some indications that there are school districts and state agencies that believe that if a child is "regarded" by someone (the child's doctor or the child's mother, for example) as "handicapped," the "regard" by itself entitles the child to protection under Section 504, and thus triggers the requirement for evaluation. This is not accurate. In such a case, the proper inquiryby the school district upon receiving this information is whether there is "reason to believe" that this child, because of an actual handicap, may need special education or related aids and services, and thus would need to be evaluated. 34 C.F.R. § 104.35. The opinion of the doctor or the mother is a piece of information to be considered in that decision.

To summarize: a person who falls under the second and third prongs of the definition of "handicapped person" is entitled to Section 504 protection only when the allegedly discriminatory action is based on the fact that he/she has a "record of" or is "regarded as" handicapped. Unless a person actually has a handicapping condition, the mere fact that he/she has a "record of" or is "regarded as" handicapped is insufficient, by itself, to trigger those Section 504 protections that require special treatment, (such as FAPE or reasonable accommodation), of persons with physical or mental impairments which substantially limit one or more major life activities.

Please be sure to clarify this issue in any technical assistance or enforcement activities in which it arises. If you have any questions about the content of this memorandum, please contact Jean Peelen at FTS 202-205-8637.

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18 IDELR 116
1 ECLPR ¶ 158

Joint Policy Memorandum (ADD)

Office of Special Education and Rehabilitative Services

September 16, 1991

Robert R. Davila, Assistant Secretary, Office of Special Education and Rehabilitative Services. Michael L. Williams, Assistant Secretary, Office for Civil Rights. John T. MacDonald, Assistant Secretary, Office of Elementary and Secondary Education.

- ATTENTION DEFICIT DISORDERS (ADD/ADHD)
- INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)
- Eligibility Criteria, In General
- Rehabilitation Act (Section 504), Facilities/Persons Covered by Section 504

Summary

The Assistant Secretaries for the Office of Special Education and Rehabilitative Services, the Office for Civil Rights, and the Office of Elementary and Secondary Education issued a joint memorandum on the provision of educational services to children with attention deficit disorder (ADD). According to the memorandum, children with ADD who require special education or related services are presently eligible under the IDEA categories of "other health impairment," "specific learning disability," or "serious emotional disturbance." Therefore, a separate category for ADD conditions is not necessary under the IDEA. In addition, children with ADD who do not require special education or related services may nevertheless be covered by the Section 504 regulations if their ADD substantially limits a major life activity, such as learning. Under Section 504, school districts are obligated to provide regular or special education programs, including necessary modifications and supplementary aids and services, to qualified children with ADD based on their individual needs.

I. Introduction

There is a growing awareness in the education community that attention deficit disorder (ADD) and attention deficit hyperactive disorder (ADHD) can result in significant learning problems for children with those conditions.[1] While estimates of the prevalence of ADD vary widely, we believe that three to five percent of school-aged children may have significant educational problems related to this disorder. Because ADD has broad implications for education as a whole, the Department believes it should clarify State and local responsibility under Federal law for addressing the needs of children with ADD in the schools. Ensuring that these students are able to reach their fullest potential is an inherent part of the National education goals and AMERICA 2000. The National goals, and the strategy for achieving them, are based on the assumptions that: (1) all children can learn and benefit from their education; and (2) the educational community must work to improve the learning opportunities for all

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children.

This memorandum clarifies the circumstances under which children with ADD are eligible for special education services under Part B of the Individuals with Disabilities Education Act (Part B), as well as the Part B requirements for evaluation of such children's unique educational needs. This memorandum will also clarify the responsibility of State and local educational agencies (SEAs and LEAs) to provide special education and related services to eligible children with ADD under part B. Finally, this memorandum clarifies the responsibilities of LEAs to provide regular or special education and related aids and services to those children with ADD who are not eligible under Part B, but who fall within the definition of "handicapped person" under Section 504 of the Rehabilitation Act of 1973. Because of the overall educational responsibility to provide services for these children, it is important that general and special education coordinate their efforts.

II. Eligibility for Special Education and Related Services under Part B

Last year during the reauthorization of the Education of the Handicapped Act [now the Individuals with Disabilities Education Act, Congress gave serious consideration to including ADD in the definition of "children with disabilities" in the statute. The Department took the position that ADD does not need to be added as a separate disability category in the statutory definition since children with ADD who require special education and related services can meet the eligibility criteria for services under Part B. This continues to be the Department's position.

No change with respect to ADD was made by Congress in the statutory definition of "children with disabilities"; however, language was included in Section 102(a) of the Education of the Handicapped Act Amendments of 1990 that required the Secretary to issue a Notice of Inquiry (NOI) soliciting public comment on special education for children with ADD under Part B. In response to the NOI (published November 29, 1990 in the *Federal Register,*) the Department received over 2000 written comments, which have been transmitted to the Congress. Our review of these written comments indicates that there is confusion in the field regarding the extent to which children with ADD may be served in special education programs conducted under Part B.

A. Description of Part B

Part B requires SEAs and LEAs to make a free appropriate public education (FAPE) available to all eligible children with disabilities and to ensure that the rights and protections of Part B are extended to those children and their parents. 20 U.S.C. 1412(2); 34 CFR §§ 300.121 and 300.2. Under Part B, FAPE, among other elements, includes the provision of special education and related services, at no cost to parents, in conformity with an individualized education program (IEP). 34 CFR § 300.4.

In order to be eligible under Part B, a child must be evaluated in accordance with 34 CFR §§ 300.530-300.534 as having one or more specified physical or mental impairments, and must be found to require special education and related services by reason of one or more of these impairments.[2] 20 U.S.C. 1401(a)(1); 34 CFR § 300.5. SEAs and LEAs must ensure that children with ADD who are determined eligible for services under Part B receive special education and related services designed to meet their unique needs, including special education and related services needs arising from the ADD. A full continuum of placement alternatives, including the regular classroom, must be available for providing special education and related services required in the IEP.

B. Eligibility for Part B services under the "Other Health Impaired" Category

The list of chronic or acute health problems included within the definition of "other health impaired" in the Part B regulations is not exhaustive. The term "other health impaired" includes chronic or acute impairments that result in limited alertness, which adversely affects educational performance. Thus, children with ADD should be classified as eligible for services under the "other health impaired" category in instances where the ADD is a chronic or acute health problem that results in limited alertness, which adversely affects educational performance. In other words, children with ADD, where the ADD is a chronic or acute health problem resulting in limited alertness, may be considered disabled under Part B solely on the basis of this disorder within the "other health impaired" category in situations where special education and related services are needed because of the ADD.

C. Eligibility for Part B services under other Disability Categories

Children with ADD are also eligible for services under Part B if the children satisfy the criteria applicable to other disability categories. For example, children with ADD are also eligible for services under the "specific learning disability" category of Part B if they meet the criteria stated in §§ 300.5(b)(9) and 300.541 or under the "seriously emotionally disturbed" category of Part B if they meet the criteria stated in § 300.5(b)(8).

III. Evaluations under Part B

A. Requirements

SEAs and LEAs have an affirmative obligation to evaluate a child who is suspected of having a disability to determine the child's need for special education and related services. Under Part B, SEAs and LEAs are required to have procedures for locating, identifying and evaluating all children who have a disability or are suspected of having a disability and are in need of special education and related services. 34 CFR §§ 300.128 and 300.220. This responsibility, known as "child find," is applicable to all children from birth through 21, regardless of the severity of their disability.

Consistent with this responsibility and the obligation to make FAPE available to all eligible children with disabilities, SEAs and LEAs must ensure that evaluations of children who are suspected of needing special education and related services are conducted without undue delay. 20 U.S.C. 1412(2). Because of its responsibility resulting from the FAPE and child find requirements of Part B, an LEA may not refuse to evaluate the possible need for special education and related services of a child with a prior medical diagnosis of ADD solely by reason of that medical diagnosis. However, a medical diagnosis of ADD alone is not sufficient to render a child eligible for services under Part B.

Under Part B, before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, "a full and individual evaluation of the child's educational needs must be conducted in accordance with requirements of § 300.532." 34 CFR § 300.531. Section 300.532(a) requires that a child's evaluation must be conducted by a multidisciplinary team, including at least one teacher or other specialist with knowledge in the area of suspected disability.

B. Disagreements over Evaluations

Any proposal or refusal of an agency to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child is subject to the written prior notice requirements of 34 CFR §§ 300.504-300.505.[3] If a parent disagrees with the LEA's refusal to evaluate a child or the LEA's evaluation and determination that a child does not have a disability for which the child is eligible for services under Part B, the parent may request a due process hearing pursuant to 34 CFR §§ 300.506-300.513 of the Part B regulations.

IV. Obligations Under Section 504 of SEAs and LEAs to Children with ADD Found Not To Require Special Education and Related Services under Part B

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Even if a child with ADD is found not to be eligible for services under Part B, the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 CFR Part 104 may be applicable. Section 504 prohibits discrimination on the basis of handicap by recipients of Federal funds. Since Section 504 is a civil rights law, rather than a funding law, its requirements are framed in different terms than those of Part B. While the Section 504 regulation was written with an eye to consistency with Part B, it is more general, and there are some differences arising from the differing natures of the two laws. For instance, the protections of Section 504 extend to some children who do not fall within the disability categories specified in Part B.

A. Definition

Section 504 requires every recipient that operates a public elementary or secondary education program to address the needs of children who are considered "handicapped persons" under Section 504 as adequately as the needs of nonhandicapped persons are met. "Handicapped person" is defined in the Section 504 regulation as any person who has a physical or mental impairment which substantially limits a major life activity (*e.g.,* learning). 34 CFR § 104.3(j). Thus, depending on the severity of their condition, children with ADD *may* fit within that definition.

B. Programs and Services Under Section 504

Under Section 504, an LEA must provide a free appropriate public education to each qualified handicapped child. A free appropriate public education, under Section 504, consists of regular or special education and related aids and services that are designed to meet the individual student's needs and based on adherence to the regulatory requirements on educational setting, evaluation, placement, and procedural safeguards. 34 CFR §§ 104.33, 104.34, 104.35, and 104.36. A student may be handicapped within the meaning of Section 504, and therefore entitled to regular or special education and related aids and services under the Section 504 regulation, even though the student may not be eligible for special education and related services under Part B.

Under Section 504, if parents believe that their child is handicapped by ADD, the LEA must evaluate the child to determine whether he or she is handicapped as defined by Section 504. If an LEA determines that a child is not handicapped under Section 504, the parent has the right to contest that determination. If the child is determined to be handicapped under Section 504, the LEA must make an individualized determination of the child's educational needs for regular or special education or related aids and services. 34 CFR § 104.35. For children determined to be handicapped under Section 504, implementation of an individualized education program developed in accordance with Part B, although not required, is one means of meeting the free appropriate public education requirements of Section 504.[4] The child's education must be provided in the regular education classroom unless it is demonstrated that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR § 104.34.

Should it be determined that the child with ADD is handicapped for purposes of Section 504 and needs only adjustments in the regular classroom, rather than special education, those adjustments are required by Section 504. A range of strategies is available to meet the educational needs of children with ADD. Regular classroom teachers are important in identifying the appropriate educational adaptations and interventions for many children with ADD.

SEAs and LEAs should take the necessary steps to promote coordination between special and regular education programs. Steps also should be taken to train regular education teachers and other personnel to develop their awareness about ADD and its manifestations and the adaptations that can be implemented in regular education programs to address the instructional

[redacted] [redacted]

needs of these children. Examples of adaptations in regular education programs could include the following:

> providing a structured learning environment; repeating and simplifying instructions about in-class and homework assignments; supplementing verbal instructions with visual instructions; using behavioral management techniques; adjusting class schedules; modifying test delivery; using tape recorders, computer-aided instruction, and other audio-visual equipment; selecting modified textbooks or workbooks; and tailoring homework assignments.

Other provisions range from consultation to special resources and may include reducing class size; use of one-on-one tutorials; classroom aides and note takers; involvement of a "services coordinator" to oversee implementation of special programs and services, and possible modification of nonacademic times such as lunchroom, recess, and physical education.

Through the use of appropriate adaptations and interventions in regular classes, many of which may be required by Section 504, the Department believes that LEAs will be able to effectively address the instructional needs of many children with ADD.

C. Procedural Safeguards Under Section 504

Procedural safeguards under the Section 504 regulation are stated more generally than in Part B. The Section 504 regulation requires the LEA to make available a system of procedural safeguards that permits parents to challenge actions regarding the identification, evaluation, or educational placement of their handicapped child whom they believe needs special education or related services. 34 CFR § 104.36. The Section 504 regulation requires that the system of procedural safeguards include notice, an opportunity for the parents or guardians to examine relevant records, an impartial hearing with opportunity for participation by the parents or guardian and representation by counsel, and a review procedure. Compliance with procedural safeguards of Part B is one means of fulfilling the Section 504 requirement.[5] However, in an impartial due process hearing raising issues under the Section 504 regulation, the impartial hearing officer must make a determination based upon that regulation.

V. Conclusion

Congress and the Department have recognized the need to provide information and assistance to teachers, administrators, parents and other interested persons regarding the identification, evaluation, and instructional needs of children with ADD. The Department has formed a work group to explore strategies across principal offices to address this issue. The work group also plans to identify some ways that the Department can work with the education associations to cooperatively consider the programs and services needed by children with ADD across special and regular education.

In fiscal year 1991, the Congress appropriated funds for the Department to synthesize and disseminate current knowledge related to ADD. Four centers will be established in Fall, 1991 to analyze and synthesize the current research literature on ADD relating to identification, assessment, and interventions. Research syntheses will be prepared in formats suitable for educators, parents and researchers. Existing clearinghouses and networks, as well as Federal, State and local organizations will be utilized to disseminate these research syntheses to parents, educators and administrators, and other interested persons.

In addition, the Federal Resource Center will work with SEAs and the six regional resource centers authorized under the Individuals with Disabilities Education Act to identify effective identification and assessment procedures, as well as intervention strategies being implemented across the country for children with ADD. A document describing current practice will be developed and disseminated to parents, educators and administrators, and other interested persons through the regional resource centers network, as well as by parent training centers, other parent and consumer organizations, and professional organizations. Also, the Office for Civil Rights' ten regional offices stand ready to provide technical assistance to parents and educators.

It is our hope that the above information will be of assistance to your State as you plan for the needs of children with ADD who require special education and related services under Part B, as well as for the needs of the broader group of children with ADD who do not qualify for special education and related services under Part B, but for whom special education or adaptations in regular education programs are needed. If you have any questions, please contact Jean Peelen, Office for Civil Rights; (Phone: 202/732-1635), Judy Schrag, Office of Special Education Programs (Phone: 202/732-1007); or Dan Bonner, Office of Elementary and Secondary Education (Phone: 202/401-0984).

[1] While we recognize that the disorders ADD and ADHD vary, the term ADD is being used to encompass children with both disorders.

[2] The Part B regulations define 11 specified disabilities. 34 CFR § 300.5(b)(1)-(11). The Education of the Handicapped Act Amendments of 1990 amended the Individuals with Disabilities Education Act [formerly the Education of the Handicapped Act] to specify that autism and traumatic brain injury are separate disability categories. *See* section 602(a)(1) of the Act, to be codified at 20 U.S.C. 1401(a)(1).

[3] Section 300.505 of the Part B regulations sets out the elements that must be contained in the prior written notice to parents:

> (1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;
>
> (2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take action, and a description of any options the agency considered and the reasons why those options were rejected;
>
> (3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and
>
> (4) A description of any other factors which are relevant to the agency's proposal or refusal.

34 CFR § 300.505(a)(1)-(4).

[4] Many LEAs use the same process for determining the needs of students under Section 504 that they use for implementing Part B.

[5] Again, many LEAs and some SEAs are conserving time and resources by using the same due process procedures for resolving disputes under both laws.

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OCR Memorandum (Change in Placement)

Office for Civil Rights

The Honorable Charles E. Smith
Commissioner of Education
Tennessee State Department of Education
100 Cordell Hull Building
Nashville, TN 37219-5335

Digest of Inquiry

[Date Not Provided]

- Since an October 1988 policy memorandum from OCR defines a "significant change in placement" as exclusion for an indefinite period, permanently, or for more than 10 *consecutive school days*, may Tennessee revise its current special education rules which define a "significant change in placement" as exclusion for more than 10 school days *per school year?*

Digest of Response

April 24, 1989

OCR Defines Change in Placement, Applies Rules to Bus Suspensions

OCR policy defines a "significant change in placement" as exclusion for more than 10 consecutive school days, rather than 10 cumulative school days per school year. Shorter suspensions may, however, constitute a change in placement triggering due process, if they create a pattern of exclusion which is aimed at avoiding *Honig*. OCR also requires districts to reevaluate handicapped students prior to a significant change in placement to determine whether misconduct is a manifestation of the handicapping condition. If misconduct is not related to the handicapping condition, the student may be expelled and all educational services may be ceased. These disciplinary policies also apply to bus suspensions, whether the student is receiving transportation as a related service in accordance with an IEP, or under a district's regular transportation service.

Text of Response

On March 13-14, 1989, Ms. Maria Dayley of my staff met with Ms. JoLeta Reynolds, Assistant Commissioner of Education, to implement the Memorandum of Understanding (MOU) that the Office for Civil Rights (OCR) has established with your agency. During the meeting, Ms. Reynolds asked Ms. Dayley for technical assistance regarding the discipline of handicapped students. She stated that in 1986, Tennessee changed its policy regarding the discipline of handicapped children after a local advocacy group filed a complaint with OCR regarding this issue. At that time, OCR told the State that a suspension of a handicapped child for more than 10 *cumulative* school days in the school year would constitute a "significant change in placement" as defined by Section 504 of the Rehabilitation Act of 1973 (Section 504) at 34 C.F.R. Section 104.35(a). Prior to such a "significant change in placement," local educational agencies (LEA's) must determine if the behavior triggering the exclusion was caused by or

[redacted]

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related to the student's handicapping condition.

The Supreme Court's decision in *Honig v. Doe*, issued in January 1988, defines a "significant change in placement" as the exclusion of a handicapped child for an indefinite period, permanently, or for more than 10 *consecutive* school days. On May 23, 1988, you wrote us stating that OCR's policy regarding the discipline of handicapped students was more restrictive than that required by *Honig*. You asked OCR for written permission to revise the State's policy to make it consistent with *Honig*. In a letter dated July 11, 1988, we informed you that the policy concerning the suspension of handicapped students for more than 10 days per school year was under consideration by OCR, and the State should not revise its policy until we reached a determination regarding this issue. In October 1988, OCR issued a policy memorandum providing guidance regarding the discipline of handicapped students. The memorandum defines a "significant change in placement" as exclusion for an indefinite period, permanently, or for more than 10 *consecutive* school days. In light of this memorandum, Ms. Reynolds requested that we reconsider the State's request to change its policy regarding the discipline of handicapped children.

This is to inform you that the Tennessee State Board of Education may change its policy regarding the discipline of handicapped students. To be consistent with OCR policy, the State policy should provide as follows:

1. If a proposed exclusion of a handicapped child is permanent (expulsion) or for an indefinite period, or for more than 10 consecutive school days, the exclusion constitutes a "significant change in placement" under Section 104.35(a) of the Section 504 regulation.

2. If a series of suspensions that are each of 10 days or fewer in duration creates a pattern of exclusions that constitutes a "significant change in placement," the requirements of 34 C.F.R. Section 104.35(a) also would apply. The determination of whether a series of suspensions creates a significant change in placement must be made on a case-by-case basis. In no case, however, may serial short exclusions be used as a means to avoid the Supreme Court's prohibition of suspensions of 10 days or longer. An example of a pattern of short exclusions that would clearly amount to a significant change in placement would be where a child is suspended several times during a school year for eight or nine days at a time. On the other hand, a series of suspensions that, in the aggregate, are for 10 days or fewer is not a significant change in placement. Among the factors that should be considered in determining whether a series of suspensions has resulted in a "significant change in placement" are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the child is excluded from school.

3. In order to implement an exclusion that constitutes a "significant change in placement," a reevaluation of the child must be conducted in accordance with 34 C.F.R. Section 104.35.

4. As a first step in this reevaluation, the school district must determine, using appropriate evaluation procedures that conform with the Section 504 regulation, whether the misconduct is caused by the child's handicapping condition.

5. If it is determined that the handicapped child's misconduct *is* caused by the child's handicapping condition, the evaluation team must continue the evaluation, following the requirements of Section 104.35 for evaluation and placement, to determine whether the child's current educational placement is appropriate.

[redacted]

6. If it is determined that the misconduct *is not* caused by the child's handicap, the child may be excluded from school in the same manner as similarly situated nonhandicapped children are excluded. In Tennessee, in such a situation, all educational services to the child may cease.

7. When the placement of a handicapped child is changed for disciplinary reasons, the child and his/her parent or guardian are entitled to the procedural protections required by Section 104.36 of the Section 504 regulation; that is, they are entitled to a system of procedural safeguards that includes notice, an opportunity for the examination of records, an impartial hearing (with participation of parents and opportunity for counsel), and a review procedure. Thus, if after reevaluation in accordance with 34 C.F.R. Section 104.35, the parents disagree with the determination regarding relatedness of the behavior to the handicap, or with the subsequent placement proposal (in those cases where the behavior is determined to be caused by the handicap), they may request a due process hearing.

8. The suspension of a handicapped student from transportation may constitute a "significant change in placement" if a school district: has been transporting the student (either under an Individualized Education Program or under the school district's regular transportation policies); suspends the student from the transportation as a disciplinary measure; and provides no other form of transportation. If a handicapped student is suspended from the bus for more than 10 days, this suspension constitutes a "significant change in placement." In order to determine whether a series of suspensions from the bus that are each of 10 days or fewer in duration constitutes a "significant change in placement," the school district needs to apply the same criteria that is used for the disciplinary suspension of a handicapped child from the educational program.

We will be happy to review your revised policies and procedures for the discipline of handicapped students once they are developed. Meanwhile, if you have any questions or if we can be of further assistance, please call Mr. Louis O. Bryson, Sr., Director, Postsecondary Education Division, at (404) 331-2806.

Jesse L. High
Regional Civil Rights Director

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19 IDELR 893
1 ECLPR ¶ 287

OCR Memorandum (Accessibility)

Office for Civil Rights

July 21, 1992

Richard D. Komer, Deputy Assistant Secretary

- AMERICANS WITH DISABILITIES ACT (ADA)
- PROGRAM ACCESSIBILITY
- Rehabilitation Act (Section 504), Accessibility
- U.S. Department of Education, Office for Civil Rights (OCR)

Summary

OCR issued a memorandum to explain certain technical amendments to the Uniform Federal Accessibility Standards (UFAS) regarding signage. On October 3, 1988, the General Services Administration published a final rule amending the UFAS provisions on signage, in an effort to clarify when signage would be subjected to UFAS standards. Under Section 504, recipients of federal financial assistance are covered by the UFAS standards, including the signage amendments. Public entities covered by Title II of the Americans with Disabilities Act (ADA) have a choice of following either the UFAS or the ADA Accessibility Guidelines for Building and Facilities. Public entities that choose to follow the UFAS are also subject to the UFAS signage amendments.

The purpose of this memorandum is to inform you about a technical amendment to the Uniform Federal Accessibility Standards (UFAS) concerning signage. On October 3, 1988, the General Services Administration, one of the four standard-setting agencies for buildings subject to the Architectural Barriers Act, published a final rule in the *Federal Register* amending the UFAS provisions concerning signage. (See Attachment.) Under Section 504 ofthe Rehabilitation Act of 1973, recipients of Federal financial assistance from the U.S. Department of Education are subject to the amendment. Public entities covered by Title II of the Americans with Disabilities Act have a choice of following either UFAS or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities in designing, constructing, or altering facilities or parts of facilities. Public entities that choose to follow UFAS are also subject to this amendment.

Changes to UFAS are highlighted below:

> Sections 4.1.1(7) and 4.1.2(15) of UFAS incorrectly imply that all signs must comply with all provisions concerning Signage (4.30).[1] It was never the intent of UFAS that all signs comply with all signage provisions. Signage must comply with signage provisions as follows:
>
> All signs (permanent and temporary) must comply with the UFAS requirements for Character Proportion (4.30.2) and Color Contrast (4.30.3).

[redacted]

Permanent signage that identifies rooms and spaces shall also comply with the UFAS requirements for Raised Characters or Symbols (4.30.4) and Mounting Location and Height (4.30.6).

Temporary information on room and space signage, such as the current occupant's name, does not have to comply with the UFAS requirements for Raised Characters or Symbols (4.30.4), provided that the permanent room or space identification complies with the requirements of 4.30.4.

As provided in the UFAS requirements for Symbols of Accessibility (4.30.5), the international symbol of accessibility must identify accessible features (e.g., parking spaces designated as reserved for individuals with physical handicaps, passenger loading zones, accessible entrances, and accessible toilet and bathing facilities).

The language of Section 4.30.4 has been changed so that the use of "indented" or "incised" characters or symbols is no longer required in signage. The final regulation indicates that the inclusion of the word "indented" was a drafting error in the original UFAS.

Copies of the UFAS that Regions have received from the Architectural and Transportation Barriers Compliance Board for public dissemination have not contained the amended language. The three other standard-setting agencies under the Architectural Barriers Act--the Department of Defense, the Department of Housing and Urban Development, and the U.S. Postal Service--did not amend UFAS for buildings under those agencies' jurisdictions. Thus, the amended language is not included in copies of UFAS that are available for dissemination. When regional staff disseminate copies of UFAS to education recipients, they should attach the October 3, 1988, amendment.

If you have any questions, please have a member of your staff contact Alice Wender, Chief, Elementary and Secondary Education Technical Assistance and Program Support Branch, at FTS (202) 205-8481.

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[1] The final rule states that Sections 4.1.1(7) and 4.1.2(15) of UFAS should have included specific scoping provisions for Signage (4.30). The use of the term "scoping provisions" in this context is misleading. Scoping provisions establish the minimum number of elements and spaces required to comply with the technical standards (e.g., how many parking spaces are required to be accessible, accessible toilet rooms). In this rule, however, the point being made is that not all signs are required to complywith every provision for Signage (4.30).

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16 EHLR 491

OCR Staff Memorandum (Expulsion)

Office for Civil Rights

November 13, 1989

William L. Smith Acting Assistant Secretaryfor Civil Rights

- Discipline, Expulsion
- Placement, Persons Qualified for Placement Decision
- Rehabilitation Act (Section 504), OCR Procedures

Summary

In regard to the expulsion of disabled students, OCR issued a memorandum summarizing the current case law as to the qualifications of persons who make threshold determinations of whether misconduct is related to disability and the criteria to be applied in such determinations. OCR reiterated that a disabled student may not be removed from school for more than ten days without a "manifestation determination" by a group of persons who are, at the minimum, knowledgeable about both the student and special education. OCR further noted that the threshold determination may be made by the same persons who regularly decide placement under the Section 504 regulations. Finally, the manifestation determination must be based on such recent and relevant information which competent professionals would require, including psychological data related to the student's behavior, OCR concluded.

This memorandum supplements guidance entitled, "Long-term Suspension or Expulsion of Handicapped Students," issued on October 28, 1988. As stated in that memorandum, before implementing a suspension that constitutes a significant change in a handicapped child's placement, a recipient must conduct a reevaluation. As a first step in this reevaluation, the recipient must determine, using appropriate evaluation procedures that conform with the Section 504 regulation, whether the misconduct in question was caused by the child's handicapping condition.[1]

Questions have been raised regarding who should make the threshold determination whether misconduct is caused by the handicapping condition, and what criteria should be applied in making this determination. Since the Section 504 regulation does not speak directly to this issue, case law has been examined for guidance.

Case law

The first appellate decision rendered on the requirements of Section 504 and the Education of the Handicapped Act (EHA) regarding the expulsion of handicapped students held that, "before a handicapped student can be expelled, a trained and knowledgeable group of persons must determine whether the student's misconduct bears a relationship to his handicapping condition." *S-1 v. Turlington,* 635 F.2d 342, 350 (5th Cir.) *cert denied,* 454 U.S. 1030 (1981) *(Turlington).*[2] In a case challenging expulsions that had occurred early in the 1977-78 school year, the court said that "[t]he only way in which the expulsions could have continued [after the EHA became effective] is if a qualified group of individuals determined that *no* relationship existed between the plaintiffs' handicap and their misconduct." *Id.* (emphasis added). The court upheld the district court's ruling that no handicapped student could be expelled for misbehavior related to the handicap, stressing that the burden is on state and local officials to raise the question of handicap relatedness. *Id.* at 349.

The court said that a placement decision (such as expulsion) must be made by the individuals specified in the EHA and Section 504 regulations, and these same individuals should determine whether the misconduct resulted from the handicap (citing favorably a district court decision in the Seventh Circuit, *Doe v. Koger,* 480 F. Supp. 225 (N.D. Ind. 1979) (*Koger*)). The determination may not be made by the individuals responsible for the school's regular disciplinary procedures, such as "school board officials who lacked the necessary expertise to make such a determination." *Id.* at 347. The court cited to Section 504 and EHA regulatory provisions requiring that placement decisions be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

The court provided some guidance on the basis for the determination of causation. First, "[a] determination that a handicapped student knew the difference between right and wrong is *not* tantamount to a determination that his misconduct was or was not a manifestation of his handicap." (emphasis added) *Id.* at 346. Second, a District may not make a categorical determination that misconduct, as a matter of law, is not a manifestation of handicap where the student is not classified as seriously emotionally disturbed or behaviorally handicapped. *Id.* at 346-47.

The next appellate opinion about handicap-related misconduct was *Kaelin v. Grubbs,* 682 F.2d 595 (6th Cir. 1982), although the sole issue on appeal was whether an expulsion was a change in educational placement. The court said it was, adopting the Fifth Circuit's rationale in *Turlington.* Similarly citing to *Koger,* the Sixth Circuit said the placement team must decide whether the child's handicap caused the disruptive behavior. 682 F.2d at 601, 602. Although its decision was based entirely on the EHA, the court referred to the similar procedural protections of Section 504. *Id.* at 597.

Finally, the Ninth Circuit, interpreting the EHA,[3] stated that, before a suspension that constitutes a significant change in placement, a proper determination must be made whether misbehavior is a manifestation of a child's handicap. *Doe v. Maher,* 793 F.2d at 1482. "A 'proper determination' is one that is arrived at by an IEP team according to the correct procedures . . .or, if applicable, by a hearing officer or court on review.'" *Id.* n. 9.

In overturning the district court's ruling that an IEP meeting must be convened *within five days* to consider an expulsion, the Ninth Circuit reasoned that EHA and Section 504 regulations contained no such requirement. Moreover, the IEP team would be "unequipped to evaluate the source of a handicapped student's misconduct until it has obtained the results of a comprehensive evaluation conducted in accordance with 34 C.F.R. § 104.35 . . .," and such a complete evaluation could rarely be conducted within five days. 793 F.2d at 1488. The court thus implied that a determination of handicap-relatedness could not be made on the basis of evaluation data that was almost three years old and existing records of a child's school progress and behavior, as permitted by the California Education Code.

On appeal, the Supreme Court affirmed the decision of the Ninth Circuit, holding that a school district receiving EHA funds may not unilaterally suspend for more than ten days a student who is violent and disruptive because of an emotional problem. The Court did not rule on who should determine handicap-relatedness. *Honig v. Doe,* 108 S. Ct. 592 (1988).

Since the Supreme Court's decision, no Federal court has clarified this issue. One appellate court, while holding that it lacked jurisdiction over a case in which administrative remedies had not been exhausted, noted a state agency determination on the issue, however. In an EDGAR complaint alleging that a handicapped child had been denied academic credit for courses in

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which he had missed more than 25 percent of the classes, the Rhode Island Department of Education had ruled that a multidisciplinary team must "determine if there was a causal relationship between the misbehavior for which he was being disciplined and his handicap, and if his educational placement was appropriate." *Christopher W. v. Portsmouth School Committee*, 877 F.2d 1089, 1091 (1st Cir. 1989). The Rhode Island Education Department had determined that the handicap appeared to have contributed to the child's absences, and that denial of credit, therefore, would violate Section 504..

To summarize, the courts uniformly require that a determination of whether a handicapped child's misconduct arises from a handicap be made by a group of persons, including individuals personally familiar with the child and knowledgeable about special education. They also unequivocally rule out decisions based on a recipient's normal disciplinary procedures, for example, by the principal or school board. The Fifth, Sixth, Ninth, and Eleventh Circuits (and a district court in the Seventh Circuit) go further, specifying that the determination should be made by the placement team. (No other Federal trial court opinion adds to our understanding of these issues.)

These opinions offer only general guidance on how the determination should be made on whether misconduct is caused by a handicap. The Ninth Circuit would require a comprehensive evaluation in accordance with the Section 504 regulation before deciding whether the misconduct is handicap-related. In light of the professional composition of the group mandated by every court, however, we can infer that the determination must be based on the kind of information necessary to a competent professional decision. For example, the information considered would include psychological evaluation data related to behavior. Further, the relevant data would be recent enough to afford an understanding of the child's current behavior. The opinions also suggest what the causation determination is not. It is not simply a reflection of the child's special education classification (for example, that he is classified "learning disabled," not "behavior disordered"). It is not a determination of whether he knew right from wrong or that she knew her behavior was wrong. It is not sufficient that the procedure satisfies legal requirements for the suspension of nonhandicapped children.

Conclusion

Neither the Section 504 regulation nor the case law provides a simple rule of thumb. Drawing upon the Section 504 regulatory requirements for evaluation and placement at 34 C.F.R. § 104.35 and the case law discussed above, we conclude, nevertheless, that a handicapped child may not be suspended from school for more than ten days unless a recipient has determined that the misbehavior is *not* a manifestation of his or her handicapping condition. That determination may be made by the same group of people who make placement decisions conforming to the process required by Section 504 regulation. The group must have available to it information that competent professionals would require, such as psychological evaluation data related to behavior, and the relevant information must be recent enough to afford an understanding of the child's current behavior. At a minimum, the group must include persons knowledgeable about the child and the meaning of the evaluation data.

If you have questions about the content of this memorandum, please feel free to contact me or have a member of your staff contact Jean P. Peelen, FTS 732-1641.

[1] Following the lead of the Ninth Circuit in *Doe v. Maher*, 793 F.2d 1470, 1480 n. 8 (1986), *aff'd sub nom. Honig v. Doe*, 108 S. Ct. 592 (1988), we regard as synonymous the terms "conduct that arises from the handicap," "conduct that is caused by the handicap," "conduct that is a manifestation of the handicap," "conduct that has a direct and substantial relationship to the child's handicap," and "handicap-related misconduct." A handicapped child's conduct would be covered by this definition if the handicap significantly impairs the child's behavioral controls, but would not be covered if it bears only an attenuated relationship to the child's handicap.

[redacted]

[2] The decision applies also in the Eleventh Circuit.

[3] The court of appeals, relying on the Supreme Court's decision in *Smith v. Robinson*, 468 U.S. 992 (1984), reversed the lower court's holding under Section 504. By enacting the Handicapped Children's Protection Act of 1986, 20 U.S.C.A. § 1415(f)(1988), Congress overruled *Smith*. Thus, EHA may no longer limit rights available under civil rights statutes. Like the Supreme Court in *Honig v. Doe*, the Ninth Circuit cited to the Section 504 regulation at 34 C.F.R. § 104.35, despite having said that its ruling relied only on the EHA.

The Fourth Circuit also has ruled that the EHA prohibited a school board from expelling a child whose misbehavior was related to his handicap. However, the opinion does not assist us in understanding how to determine the relationship between the misconduct and the handicap. *School Board of the County of Prince William, Virginia v. Malone*, 762 F.2d 1210 (4th Cir. 1985).

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OCR FACTS: SECTION 504 COVERAGE OF CHILDREN WITH ADD

1. Q. What is ADD?

   A. Attention Deficit Disorder (ADD) is a neurobiological disability. It is characterized by: attention skills that are developmentally inappropriate, impulsivity, and, in some cases, hyperactivity.

2. Q. Are all children with ADD automatically protected under Section 504?

   A. No. Some children with ADD may have a disability within the meaning of Section 504; others may not. Children must meet the Section 504 definition of disability to be protected under the regulation. Under Section 504, a "person with disabilities" is defined as any person who has a physical or mental impairment which substantially limits a major life activity (e.g., learning). Thus, depending on the severity of their condition, children with ADD may or may not fit within that definition.

3. Q. Must children thought to have ADD be evaluated by school districts?

   A. Yes. If parents believe that their child has a disability, whether ADD or any other impairment, and the school district has reason to believe that the child may need special education or related services, the school district must evaluate the child. If the school district does not believe the child needs special education or related services, and thus does not evaluate the child, the school district must notify the parents of their due process rights.

4. Q. Must school districts have a different evaluation process for Section 504 and the IDEA?

   A. No. School districts may use the same process for evaluating the needs of students under Section 504 that they use for implementing IDEA.

5. Q. Can school districts have a different evaluation process for Section 504?

   A. Yes. School districts may have a separate process for evaluating the needs of students under Section 504. However, they must follow the requirements for evaluation specified in the Section 504 regulation.

6. Q. Is a child with ADD, who has a disability within the meaning of Section 504 but not under the IDEA, entitled to receive special education services?

   A. Yes. If a child with ADD is found to have a disability within the meaning of Section 504, he or she is entitled to receive any services the 504 team decides are necessary.

7. Q. Can a school district refuse to provide accommodations to a child with ADD because he or she does not meet the eligibility criteria under the IDEA?

A. No.

8. Q. Can a child with ADD, who is protected under Section 504, receive related aids and services in the regular educational setting?

A. Yes. Should it be determined that a child with ADD has a disability within the meaning of Section 504 and needs only adjustments in the regular classroom, rather than special education, those adjustments are required by Section 504.

9. Q. Must a school district have a separate hearing procedure for Section 504 and the IDEA?

A. No. School districts may use the same procedures for resolving disputes under both Section 504 and the IDEA. In fact, many local school districts and some state education agencies are conserving time and resources by using the same due process procedures. However, education agencies should ensure that hearing officers are knowledgeable about the requirements of Section 504.

10. Q. Can school districts use separate due process procedures for Section 504?

A. Yes. School districts may have a separate system of procedural safeguards in place to resolve Section 504 disputes. However, these procedures must follow the requirements of the Section 504 regulation.

11. Q. What should parents do if the state hearing process does not include Section 504?

A. Under Section 504, school districts are required to provide information and inform parents of these procedures. Thus, school districts are responsible for providing a Section 504 hearing even if the State process does not include it.

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